

CONSIDERATIONS  
ON CERTAIN  
POLITICAL TRANSACTIONS

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OF THE  
PROVINCE OF SOUTH CAROLINA:

CONTAINING

A V I E W

OF THE

COLONY LEGISLATURES

(Under the Description of That of CAROLINA in Particular).

WITH

O B S E R V A T I O N S,

Shewing their RESEMBLANCE to the BRITISH MODEL.

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—In Vitium Libertas excidit, et Vim  
Dignam Lege regi.

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HORAT.



by M. Robinson

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CONFIDENTIAL

ON CERTAIN

POLITICAL TRANSACTIONS

OF THE

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## CONSIDERATIONS, &c.

**I**T is the Duty of a Good Citizen and a Loyal Subject, to promote, as far as in him lies, the Public Service; and one step towards it is, candidly to examine those Principles and Tenets which divide Men's Minds, and inflame one part of a Community who glory in adopting, and the rest in opposing and rejecting them.

Opposite Sentiments, long remaining unexplained, always engender Disputes; and as it is a nice and delicate concern to discuss the Causes of Public Discontent, the business often is neglected. — Hence it is that prejudices naturally arise; loose opinions steal into Men's hearts; and That is held for Truth which flatters the present Humour: besides, there is a Fashion in the Mode of *Thinking*, as well as in the Mode of *Dress*.

The great aim of a Worthy Writer ought to be directed to the search of Truth.—He may be permitted to express himself with so much warmth as will convince his Reader that he feels: but intemperance and passion mock all serious disquisition, and must be carefully avoided; for *over-heated Zeal never helps a bad Cause, and seldom serves a good one.*

Under this kind of influence and persuasion I take up the pen; but with that modest fear, that trembling awe, and mistrustful apprehension, which almost shake my resolution. I therefore

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humbly bespeak the candid attention of my Readers, and those liberal allowances which the Generous Public are ever ready to make, when modestly implored, and not arrogantly or self-sufficiently demanded.

The best proof of my own candour is to avow my connection with the Crown; that I am a downright *Placeman*; have been so for nearly twenty years; and that I owe more to the Royal Favor, than any merit I possess can justly claim. And now, methinks, I may fairly be allowed to say, according to the Maxim of the Times, that I have given a most Disgustful Figure of myself—a monstrous Portrait! — the painting whereof is coarse, the colours glaring, and the whole Piece obnoxious to the sight. I fear the number of my Readers will be greatly lessened. — Not a Person out of Place will, probably, peruse me; and the Patriots will, one and all, avoid me: for, according to modern Acceptation, a Man in Place is a perfect *Basilisk* to a *Patriot* out of Place; it being now very manifest to all Mankind, that this single circumstance alone, *the being in or out of Place*, defines and gives the difference, between a *Popular Member* of the Community, and a *Courtier* at St. James's. No matter—The Ill-favoured Figure is before the Public Eye; and they are welcome to use it with all the Gothic Freedom of their Ancestors, and to censure or approve.

It is not my intention to enquire into the Policy of imposing Stamp-duties on the Subjects in America; neither do I presume to determine any thing respecting an Act so extremely offensive to the Colonies in general; but I beg to offer a small conjecture, That the Repeal thereof will prove to be an *Epoch* in the Annals of British Story; for, since that Memorable Period, the Public Affairs of these Countries have been in a state  
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of almost ruinous Distraction; and what was probably meant to inspire Gratitude and Love, has rather kindled Rancour and Disgust.—The affection of the Parent State seems to be considered as the effects of aged fondness and impotent attachment: and forry I am to say, that Concessions have daily produced Usurpation and Resistance; one claim has been followed by another, which, generating more, have multiplied like the encreasing power of numbers, in a course, as it were, of *Geometrical Progression*.

By slow, and almost imperceptible degrees, Jealousies and Distrusts have fastened upon Men's Understandings; and the Tone and Temper of the People's Minds have undergone some Fatal Changes. Man is not born for a series of indulgence — and Human Nature teaches us, that we cannot bear a constant Tide of flattering Success, without becoming Insolently Saucy, and Arrogantly Vain. It is as necessary that some Line should limit and ascertain the exact Boundaries of our Political System, as that Landmarks should be made to determine the extent and figure of our Lands. Dormant Rights likewise, and supposed Titles, are eternal sources of Confusion! And such is the strange Contradiction of our Nature, that we never complacently yield a clear Right with so good a grace, as when it is powerfully demanded. Thus we may be justly stiled, "*Children of a larger Growth*;" for Children lose their temper when too much humoured and caressed.

It is not my design at present to carry my Observations beyond the Boundary Line of the Province of South Carolina; though I must take notice by the way, that when American Disputes ran very high, some years ago; and all the Men of Genius in our Sister Colonies strained every



nerve, and summoned every power, to support the favorite Doctrine of the Times, *we stood gazing* with a silent Admiration; and, like the stupid Devotees of old at the Mystic Oracles of Delphos and Apollo, waited for a Breath of Inspiration from the Renowned Town of Boston! In short, we had just so much Understanding as enabled us to Copy, with tolerable accuracy, those Lessons of Political skill, which were kindly wafted to us *from the Land of Vision* (as a decent Writer prettily enough styles the Province of New-England). This, however, was our *Ultima Thule* for some time.—The power of Mimickry baffled all the powers of Genius, and our Ambition was well satisfied; partly under the persuasion of being good Scholars, and partly under the flattering hope, that we might in due season become Masters of the Art. Practice ever gives confidence—and as a Child, by frequent essays to walk, is encouraged to lay aside his *go-cart*, and quarrel with his *leading-strings*, so we, in like manner, began to take Courage, to feel our own Strength, and to find our own Feet. There is something very soaring in the Human Mind; and an Idea of *Originality* is flattering to a great degree. Hence it is, that I date those Memorable Exertions, which never once entered into the Heads of our *Northern Tutors*: and what adds to their Value and Importance is, that the Acts, which I propose to celebrate, retain, in every sense of the word, their *Originality* to this day; not one Copy having been made by a single Colony on this Wide-Extended Continent.

The first Fancy which cast forth its irradiating beams upon the Minds of our Assembly, signaled the Annals of the Year 1766.—It was then discovered, that the "*American Stamp-Act was not transmitted to the Governor by the Secretaries of*  
*State,*"



"*State, or Lords of Trade*:" and although the Lieutenant-Governor, who was then in Administration, had been furnished by the Attorney-General with the Act printed by His Majesty's Printer, yet it was not deemed by the Assembly to be such a Notification thereof, as to oblige a Governor to enforce the Execution of it.

It is difficult to say, to whom they were indebted for this Wonderful Discovery: whether to Lawyers or Laymen, is very immaterial, inasmuch as nothing of the *kind* was ever hinted by any other Provincial Senate. Perhaps our Neighbours recollected what my Lord Coke says, that \* "before Printing, and till the Reign of Henry the Seventh, Statutes were Engrossed in Parchment, and by the King's Writ proclaimed by the Sheriff of every County," and therefore, they might possibly conclude, that this practice was not only out of use, but since the Art of Printing was an unnecessary caution. Be this as it may, it is sufficient to observe, that the Honor of this *State Juggle* belongs to *us* alone.

I mention this by the bye, as being an *Effort* of our own; and yet not so much for the Credit which it gives, as to convince Mankind, what astonishing advances we have made, from the first moment we abandoned our Political Teachers, and stood like Men upon our own proper legs. — Besides, there is both Instruction and Delight, in tracing the displays of Human Understanding, from the early budding forth, to a more advanced stage of culture and improvement. When we proceed step by step, tracing, as it were, the several gradations, marking the stealing progress of Man's inventive skill, and keep a steady eye on the several Operations, we naturally ac-

\* 2 Inst. 526, 644, 670.

quire a regular System of Reflection, and we find our Judgement ripened, in proportion to the attention we have given, and the admiration we have paid.

The Reader will perceive, that the first commencement of Carolina Politics on our own proper bottom (after most Servile Imitations about the same period), is dated upon the Introduction of the Stamp-Act into the British Colonies: and, having said as much as the Importance of our *first Walk* in the wide field of Political Science, merits at my hands, I proceed to state and consider a *Second Effort* of the Assembly, which, for its *vast Reach*, *profound Depth*, and *uncommon Boldness*, challenges the first Rank in the Annals of Modern Story.

That the mind may be duly prepared to receive a becoming impresson of this matter, it is proper to premise, by way of excuse for that lapse of time between the *first Stroke* and the *second*, that our advances, though slow, and after a long pause, are nevertheless extremely regular and sure: and though we cannot boast any great rapidity of Genius, it is evident that we sufficiently atone for the defect by the *solidity*, the *comprehensiveness*, the *novelty* of the Plan, and the *immensity* of its Object.—For my own part, I always prefer a superstructure upon an old and settled foundation—I hate all sudden and flashy operations; they have nothing either permanent or secure about them: then, again, they supply little for the mind to dwell upon; for travelling like a ray of light, they both dazzle and confound; whereas the *sober*, the *cool*, the *long digested Plan* commonly bids fair to secure both Approbation and Applause. Let us now bring this Business to a proper Test; try it by its own intrinsic worth; examine its tendency; view the  
measure

measure through the purest speculum; and, provided the Enquiry is conducted with singleness of heart, and with an eye to Truth, we shall neither repine at the labour, or retire from the contemplation of the subject with disgust.

On the eighth day of December, 1769, a full House of Assembly passed an Order in the words following:

“ ORDERED, That the Public Treasurer do  
 “ advance the Sum of 10,500l. Currency (equal  
 “ to 1500l. Sterling), out of any Money in the  
 “ Treasury, to be paid into the hands of certain  
 “ Members therein mentioned, who are to remit  
 “ the same to Great Britain, for the Support of  
 “ the Just and Constitutional Rights and Liber-  
 “ ties of the People of Great Britain and Ame-  
 “ rica.

“ RESOLVED, That this House will make Pro-  
 “ vision to reimburse the Public Treasurer the said  
 “ Sum.

“ By Order of the House.”

This Sum was remitted by Bills of Exchange, drawn by some Merchants there, in favor of the late Public Treasurer of the Province, on certain Gentlemen in London and Bristol.

This being the plain and simple state of the Case, it is but just that the Assembly's inducements for adopting this measure should accompany the fact. After a repose of about three Years, from the date of the last Transaction, the Assembly had been, no doubt, ruminating upon the situation of Public Affairs, both at home and abroad: and as Men of liberal sentiments disdain to confine their Benefactions to the Members of their own soil and climate; and, like Citizens of the World, taking a wise and extended range, and wisely contemplating the rise and fall of Empires, and, probably, reflecting that the Consti-  
 tion



tution of Great Britain was apparently going to decay, and that only one faint dawn of hope remained from a *Club of Patriots*, who had then lately formed themselves into a Society for Supporting *The Bill of Rights*: I say, from some of these considerations they voted the Sum stated in the Order. It appears, likewise, very clear to me \*, that they were convinced “how nearly the Americans must be affected by any attacks upon the Constitutional Rights and Liberties of their Fellow-Subjects residing in Great Britain; and that they, perceiving the Oppressions they and the Colonies actually suffered proceeded from the same cause; and also feelingly sympathizing with those *noble Spirits*, who had stood, and were then standing, as it were, in the Breach, fronting the whole collected Fury of Ministerial Vengeance; therefore they gave this free and liberal aid, that the same might be applied in Defence of the Constitutional Rights of all the Subjects of the British Empire; and particularly for Supporting such of their Fellow-Subjects, who, by asserting the just Rights of the People, become obnoxious to Administration, and suffer from the Hand of Power.

“I am also persuaded, that this Assistance was given upon an idea, that those noble Purposes could not be carried into execution in any measure so effectually as by placing the Money in the Hands of the *Gentlemen Supporters of The Bill of Rights, that truly Patriotic Body of Men*; so that Peace, and Happiness, and Constitutional Security, might thereby be extensively and freely enjoyed by every Subject throughout the British Empire.”

\* The Committee's Letter to the Agent.



No Man can deny that these were the ostensible reasons for this extraordinary Gift; and as all our present Distractions spring from this single source; and as the tendency of the measure makes this subject a point of some concern; I shall take the liberty to examine it with all that spirit of Freedom, which it seems to have been the ambition of the Assembly, in other cases, to cultivate and improve. I fly to the great Bulwark of our Liberties—the *Press*;—and as it is the peculiar privilege of a free-born Subject of Great Britain to consider the legality, justice, and propriety of Public Measures, no Man, with any face of reason, can blame my conduct in this respect. I purposely avoid every personal reflection; neither is it my design to cast a slur on a single Individual, or to point at the characters, principles, or tenets of Private Persons.—It is the act of the whole Body which alone engages my attention; and, therefore, if any word or phrase can be tortured to import private reflections, let them call to mind, that I profess to treat of *Measures*, not of *Men*.

I believe it will be readily allowed, by every Person of common Understanding, that the *Purity* of an Intention is not of itself alone a substantial reason for a measure grounded thereon; and it is a point alike obvious and admissible, that whatever Acts, for the advancement of the Public Good, are proposed to be adopted by a Legislative Body, must have their foundation in the Constitution, or ought to be rejected: because, under imaginary notions of doing *good* upon false principles, they may be insensibly led to commit great *evil*: it is, therefore, incumbent upon all *Bodies Politic*, to examine with the utmost nicety and precision, the true bottom and foundation of every proposition, lest they should be unwarily

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betrayed to wound that Constitution, which it is their Duty to support. Legislators must never do any thing, merely because they *dare*; for this is a base and ignoble maxim:—they must always Virtuously Dare to do what is *Right*, that they may be cautiously fearful of doing what is *Wrong*.

The Money being thus voted and remitted, was actually paid to the Illustrious *Supporters of the Bill of Rights*, or to the Secretary of that Society for their use, according to the intention of the gift: how the same has been applied is a kind of secret, which will probably remain so; and it is very foreign to my present purpose, to pass even a conjecture on this head.

About the month of March, 1770, the Lower House sent to His Majesty's Council (being the Upper House of Assembly) the Annual Tax-Bill, to defray the Charges of the Government from the first day of January to the thirty-first day of December, 1769, both days inclusive, and for other Services therein mentioned: and on the second reading thereof, and also of the Schedule there-to annexed, the Council discovered the following Charge: viz. "To Jacob Motte, Esq. advanced by him to certain Members of the House, by a Resolution of the House of the eighth of December last, 10,500 l." and the Council, by a message to the Lower House, dated the fifth day of April, 1770, declared, That the Grant of the Sum beforementioned did not appear, in any sense, *honourable, fit, or decent*: not Fit or Honourable, as they conceived the Assembly's Jurisdiction was merely local, and for Provincial Purposes; and not Decent, as the Grant by the Tax-Bill was expressly declared to be for His Majesty, and yet contained a provision highly affrontive to His Majesty's Government, which  
they

they declared to have ever been, in their opinion; Gracious, Mild and Good, to all His faithful People. The Message was temperate; and calculated to persuade the Lower House to remove that obstacle which prevented them from giving their concurrence to the Bill.

The Assembly sent an Answer two days after, returning the Council's Message for their Calm Re-consideration; which was immediately followed by another from the Upper House, expressing that the Assembly's Proceedings were neither Parliamentary or proper; and that they were determined to adhere to their former sentiments. About this time a Prorogation took place; and thus ended the Business of this Session.

The Legislature again sat in August following, when the Honourable William Bull, Esq. Lieutenant Governor, communicated a Copy of His Majesty's additional Instruction to the Governor, which had then lately come to his Honour's hands, bearing date the fourteenth day of April, 1770.

This Instruction recites, " That the *Lower House* of Assembly in South Carolina had lately assumed to themselves a power of ordering, without the concurrence of the Governor and Council, the Public Treasurer of the said Province to issue and advance, out of the Public Treasury, such Sums of Money, and for such Services, as they had thought fit.—It next states the Case before rehearsed, which was the very occasion of this new Instruction; and after deeming it just to put a stop to such dangerous and unwarrantable Practices, and for guarding against such unconstitutional Application of the King's Treasure, Chearfully Granted to His Majesty, for the public Uses of the Province, and for Support of the Government thereof, His Majesty is pleased to direct the Governor, on Pain

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“ of Removal, not to give his Assent to any Bill  
 “ that shall be passed by the Lower House of  
 “ Assembly, by which any Sum of Money shall  
 “ be appropriated to, or Provision made for, de-  
 “ fraying any Expence incurred for Services or  
 “ Purposes not immediately arising within, or in-  
 “ cident to, the said Province, unless upon the  
 “ King’s Special Requisition; nor to any Bill for  
 “ Granting any Sum to His Majesty, &c. in  
 “ which Bill it shall not be Provided, in express  
 “ Words, that the Money so to be Granted, or  
 “ any Part thereof, shall not be Issued or Applied  
 “ to any other Services than those to which it  
 “ is by the said Bill appropriated, unless by Act  
 “ or Ordinance of the General Assembly of the  
 “ said Province.

“ The Proclamation next forbids the Gover-  
 “ nor to give his Assent to any Bill passed by the  
 “ Lower House, by which any Sum shall be  
 “ Granted to His Majesty, &c. generally, and  
 “ without Appropriation, unless there be a Clause  
 “ inserted, Providing, that the said Money so to  
 “ be Granted shall remain in the Treasury, sub-  
 “ ject to such Appropriation as shall thereafter  
 “ be made by Act or Ordinance as aforesaid.

“ It contains also a Provision, that in all fu-  
 “ ture Bills for Raising and Granting Public  
 “ Monies, a Clause be added, subjecting the  
 “ Public Treasurer, &c. in case he shall Issue or  
 “ Pay any such Money otherwise than by ex-  
 “ press Order contained in some Act or Ordi-  
 “ nance of the General Assembly, to a Penalty  
 “ in Treble the Sum so Issued contrary thereto,  
 “ and declaring them to be *ipso facto* incapable  
 “ of holding his said Office, or any other, Civil  
 “ or Military, within the said Province.”

On the thirtieth day of August, 1770, the  
 Commons House of Assembly made another ex-  
 periment,



periment, by sending a like Tax-Bill and Schedule, containing the same obnoxious Item as the former, which the Upper House rejected on the first reading; a thing seldom done, and perhaps only allowable in certain cases: however, this Session ended like the preceding one, by a Prorogation to the 16th of January 1771.

On the 15th of February following the Lieutenant Governor communicated to the Council the following paragraph of a Letter which he received the same day from the Right Honourable the Earl of Hillsborough: "I must not omit to acquaint you, that the becoming manner in which the Council have exerted themselves in support of his Majesty's Measures, has not escaped the King's Observation; and I am commanded to signify to you his Majesty's Pleasure, that you should express to them his Majesty's Approbation of their Conduct;" which his Honour the Lieutenant Governor did accordingly.

It would be tedious and unprofitable to set down the many Meetings of Assembly since this period, or to mark the several Prorogations and Dissolutions which have taken place from time to time; it being sufficient for the present purpose to observe, that the several Tax-Bills since August 1770 have been rejected by the Upper House upon the same principle that influenced them to reject the former Bills; and the same obstruction to public business still remains; the same firmness in the Council in opposing what the Assembly insist upon as a Right, tho' disallowed by the King's Instruction; and the same obstinacy in the Commons House to maintain the Right contended for: every session has produced warm resolutions and messages in a stile of contempt and intemperate resentment.

I cannot

I cannot omit taking notice in this place, that in October 1771 another Tax-Bill was brought to the Upper House, and in November following was returned to the Lower House, with a message grounded on the original objection; and as they in the course of this Session proceeded so far as to commit the present Public Treasurers for a non-compliance on their part with a new order of the House for payment of money for a public use upon their *own Authority alone*, and in the face of the King's Instruction providing against any such attempts, the House was immediately dissolved. In April 1772, when Lord Charles Montague was in the Administration of Public Business, he took occasion in his Speech at the opening of that Session, to acquaint the Commons House of Assembly, that his Majesty "had lately again signified to him, that it was his pleasure, That he should adhere with firmness to the directions contained in his additional instruction of the 14th of April 1770; and that it was his firm resolution to adhere to the Constitution."

The Provincial Agent has been instructed to apply to the Crown, requesting his Majesty to reconsider the said Instruction; and also to withdraw the same. A Petition was accordingly presented for that purpose; but the Instruction has neither been vacated or withdrawn: the Reader will therefore clearly perceive that a solemn confirmation of the Royal Order in his Majesty's Privy Council places the dispute at so great a distance, that there is not the least shadow of expectation that the Crown will revoke an Act framed upon mature deliberation. Besides, after the most gracious condescension on the King's part to the ardent wishes of the Commons

mons House of Assembly, the said Instruction having been ratified and confirmed on a revision of the merits, it is the most unpardonable presumption to look for further concessions from the Crown.

It is not foreign to the point to observe, that the King's Ministers have been, from time to time, furnished with every plausible argument in favour of the Vote and Resolution, and with every precedent from their Journals, that by any construction can be considered as a plea for such a practice; and therefore the case has been in as fair a train as possible, and must be presumed to have undergone the strictest scrutiny and enquiry. But notwithstanding all these advantages on the side of the Commons House, and that nothing urged by them has ever been opposed or contradicted by any other body of men before the Privy Council, the same obstacle stands in the way; and not a single public debt has been provided for since the commencement of this dispute on the fatal 8th of December 1769. And that we may form some idea how the Royal Mind stands affected in relation to this subject, so late as the month of June 1773, I give you the following Extract from my Lord Dartmouth's Letter to his Honor the Lieutenant Governor, relative to the Council's having in March last rejected the Tax-Bill, which he communicated to the Council the 6th day of August last, viz. His Lordship acquaints him, "That the said proceeding of the Council was considered by the King as a fresh mark of their zeal and duty; and his Lordship was further commanded to desire, that his Honor would not fail to signify to the Council his Majesty's Approbation of their Conduct;" which his Honor then did with great pleasure.

Thus



Thus have I most dispassionately and candidly stated every material circumstance attending this important subject, nearly in the words used by the several parties in the course of the transaction; and, as far as I can judge, in no shape contradictory to their genuine sense and meaning. I am not conscious that any thing is omitted which can give light or information in the case; and tho' I have been necessarily obliged to trespass upon my Reader's Patience in order to collect the substance of every Legislative Act, and bring it into a clear point of view, so far as relates to the Vote and Order of the Commons House of Assembly, yet I trust that the matter in dispute will be now more clearly understood.

The true points of debate, then, may be comprehended in a few plain positions, arising from the above detail of facts, viz. That the Commons House of Assembly signalized themselves in favour of a Club called the *Supporters of the Bill of Rights*, held at the London Tavern, by voting in December 1769 1500l. Sterling for their use, and ordering the Public Treasurer to pay the same out of any monies in the Treasury.

That this Order was made by their own *Sole Authority*, independent of, and without the privacy or consent of the other two branches of the Legislature.

That when the first Annual Tax-Bill was sent to the Upper House in the month of March 1770, with a Schedule annexed containing the following charge, viz. "To Jacob Motte, Esq. advanced by him to the persons named by a Resolution of the House 10,500l. (being of the value of 1500l. Sterling)" the Council rejected the said Bill, and several subsequent



sequent ones have since met with the like fate for the very same reason.

That the conduct of his Majesty's Council has not only been twice highly approved by the King himself, but the dispute has been taken up by the Crown; and by an additional Instruction to the Governor, such Orders have been declared to be unconstitutional; and the like practice has been thereby fully provided against in future.

That the Assembly, tenacious of their Rights as conceived by them, and obstinate in adhering to the measure which had given so just cause of offence, have repeatedly persisted in the justice and propriety of the original Vote and Order, notwithstanding his Majesty's royal interposition in the case.

Thus stands this important Contest between the Crown and the People's Representatives of his Majesty's Colony of South Carolina.

Let us now proceed to consider the Act of the Commons House with a *bold* and *manly* freedom, and in all the different views in which it can be placed.

First, then, the measure was originally bad, in every sense of the word. For granting the power, for argument sake, to be in the Assembly to pass such a Vote and Order, independently of the other two Branches of the Legislature; still the exercise of such a power, in the case stated by the Order, was *idly* and *unnecessarily* *wanton*; the appropriation of the sum for the purposes mentioned, *arbitrary* and *unjust*; the objects of their benevolence, *laughable*, *ridiculous*, and *absurd*; and the pretended cause of the Grant, a *gross* and *palpable* *affront* to his Majesty, as also to his Government.

That the Act was both *idle* and *wanton*, may appear from a consideration of the Royal pre-

dilection in favor of this Colony on numberless occasions. The King's Ministers have ever been open to access, and almost every proposition from the Agent has been attended with remarkable success: in war, we have been peculiarly protected by an early appointment of Convoys; and Government has afforded its best aid to procure liberal Bounties on the various products of the country: in short, the Colony of South Carolina may be considered as one of the most favoured soils in his Majesty's American Dominions. That the measure was *arbitrary* and *unjust*, I appeal to any man of common sense and understanding. The Delegates of the People may raise money; it is, perhaps, their immediate province to originate Supply Bills, and to lay Duties, Taxes, and Impositions upon the People, with the concurrence of the other Branches of the State: but under pretext of these Constitutional and inherent Powers, they ought not to extend these Rights beyond the original views and intention of those from whom they derive their whole authority. There is a line of Jurisdiction for every order of men in a civilized state, beyond which they cannot pass; and fit it is that Public Bodies should have boundaries, restraints, and limitations, since they are equally liable with Individuals to be misled by passion, fancy, or caprice.

With what colour of justice could the Assembly tax their Constituents, and apply their money for purposes altogether foreign, under pretence of a power to raise money upon the People, for services or purposes immediately arising within or incident to the Provinces? Their Authority is *local*; and as their Laws are only made for their own internal Government, and extend not beyond the Jurisdiction to which they refer, so

in like manner must every Legislative Act bear a local reference, and every Grant or Appropriation of Money must, generally speaking, be made for real and substantial services performed to the Province. They have no more right to raise money upon *constructive* ideas of benefit and service, than the Judges have to declare *constructive* Treasons: No; the Law has defined and clearly pointed out the crime of Treason, and the Constitution has as precisely ascertained the power of the Commons to give and grant.

It may be said, that the Assembly have many times voted sums, by way of Relief to their Sister Colonies labouring under any general Calamity; and hence it may be inferred, that they have a right to dispose of the People's Money, and apply it to other uses than for their own immediate service. I readily allow the first part of the position, but I deny that so general a conclusion can be fairly drawn from it. The misery and sufferings of our fellow-creatures demand our aid; Humanity dictates the lesson; Nature pleads for it; and Gratitude requires it; and therefore this case is necessarily excepted out of the general maxim: besides, what one Colony gives to another is in some respect a kind of loan; inasmuch as the like return is made to our benevolence when Distress visits our own borders. Neither this case, nor a Grant of Monies upon a Royal Requisition, can afford the least pretence for a Vote, grounded upon merely an *ideal* benefit, such as the Order states.

It is true; that the Commons are to judge and determine in what cases they will or ought to give and grant; but surely it is implied, that they shall not arbitrarily and injuriously appropriate the Public Treasure, and thereby abuse the confidence reposed in them by the People.



Surely it will not be contended, that they have a right to impoverish the Members of the State, when the necessities of Government require no such exertions. Admit, for a moment, that the Assembly are possessed of a power to apply the Money of their Constituents to any purposes generally, and we must also admit, that they may do so to any Amount and Extent whatever; and then, I think, the *Represented* are in a state of absolute Vassalage and ruinous Dependence.

Is it not an Arbitrary Act to tax the Estates of the Subjects in this Colony to support a *private Club*, a *Tavern Club*, a *factious Club*, upon any specious pretence or colourable excuse? — Is it just, fit, or reasonable, that Burthens should be laid upon the People, to serve a job or gratify a whim? — Can Men suffer themselves to be so deluded, and amused, to their loss as well as shame? — Are chains more tolerable, because imposed by our own consent? — Can Men tamely surrender their Reason, and the power of Judging for themselves, by a single *act of Delegation*? — Was it their sense and meaning, to furnish their Constituents with rods for their own backs; and are those whom they chose to represent and to protect them, to be their Executioners? — Is the Colony arrived to full *maturity*? — Has it no wants of any kind? — Does it stand in need of no Supplies for Beneficial Establishments; for the Encrease and Advancement of the Products of the Soil; the Extension of its Commerce, and the Promotion of useful Knowledge? Are the several Counties so well supplied with Churches, Chapels, and Spiritual Teachers and with Schools for the Instruction of Youth; or, Are the Public Roads, Bridges, Causeways, and Fortifications, in such perfect state and condition; and are the circumstances of the Colony in general so extremely easy, that the  
Treasury

Treasury meet only to *receive*, and not to *pay*? If these things are so, we may overlook, for once at least, the *idle prodigality* complained of: but if these questions cannot be favourably answered, Every Man in the Community is injured to a certain degree; and every Sum diverted from their Service, is an Act of real Tyranny and Insolent Oppression.

For my own part, I must candidly confess, that I never reflected in my mind upon this subject, but I found two very different passions excited in my breast, *mirth* and *resentment*. The comical part of the story is, That a Collective Body of Men, in their *grave* and *senatorial stations*, should persuade themselves, that *Magna Charta*, the *Habeas Corpus Act*, and the *Bill of Rights*, stood in need of a little propping from a Club of Men whose standard was set up at the London Tavern. That the King, Lords, and Commons of England were either remiss in their Duty to the State, or indifferent about it; that all the Virtue and Public Spirit in the Nation had *squeezed* itself into the London Tavern; and that nothing could save Britain and America, but a *little ablution* at that sacred spring; are such absurd and laughable circumstances, that no Age or Nation can furnish a Precedent so superlatively ridiculous and weak! Enjoy the laugh for a moment—suppress your anger, and image to yourselves a set of sedate sensible Politicians, with big wigs and grave faces, unanimously passing such a Vote, and such an Order, by the plenitude of their own power.

View the case in a serious light, and it is impossible to sit calm and unmoved at the relation. What could influence Men to step forth, and, by an unconstitutional and unwarrantable stretch of Power, to misapply the Public Money, and at  
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the same time offer so gross an insult to His Majesty's Government both at home and abroad?

The House of Commons have never gone farther than passing a Vote of Credit upon a requisition from the King; and That for Public and Beneficial Purposes, and on Great and Emergent Occasions: but this Order can never be considered in the nature of a Vote of Credit; for it is literally issuing Money out of the Treasury, the application whereof has either been directed by Law, or the same is part of certain Surplusses arising from different Funds, which though raised, exceeds the Necessity for which the same was granted, and therefore remains in the hands of the Treasurer, to be accounted for as the respective Laws limit and appoint. It is therefore extremely evident, that such Surplus Money is a kind of *sacrum depositum* in the Treasurer's hands, which only the United Branches of the Legislature can appropriate or issue. What is once granted to His Majesty, cannot be diverted from the uses to which it is meant to be applied.—No one in his senses can contend that it may: and it is equally absurd for one Branch of the Legislature to touch Surplus Money; not only because the same has been actually granted, and to the perfection of which Grant the Three several Branches of the Legislature had unitedly concurred, and, therefore, the like Powers only can direct a different appointment respecting the same; but also because a Grant, till vacated by as solemn an Act, must stand good, and will continue to bind the Money, so as to prevent any appropriation whatsoever, till a Law directs it. And it is a joke to say, that Surplus Money may be borrowed in this loose way, upon an idea, that what is not wanted reverts, as it were, (by a kind of ingenious fiction) in the People, or in their Representatives in their behalf.



behalf. For, How can this fiction operate as a sort of virtual Repeal of the Law which granted the Sum? or, At what moment of time, and by what kind of *secret Magic*, was the same effected? —For, being once vested in the King, by Law, how can any part thereof become divested by a mere partial Order of only the Lower, and most subordinate, House of Legislature? Weak men will dispute any point, however idle and absurd; wise men will both reason and dispute; and fools will dispute, and refuse to be convinced. That His Majesty's Council have something to do in the Money-concerns of the Colony, appears by an Act of Assembly, passed the twentieth of September, 1721, entitled, "An Act for Appointing a Public Treasurer, and other Public Officers;" by which they are made liable to be called to account by each, and either, House of Assembly, and their bonds put in suit by the direction of either House, &c.

Now, to shew that the Ordering Surplus Monies to be paid upon a direction of the Commons House alone, cannot be altogether proper, I must take notice, that divers Laws make provision in such cases; and particularly the General Duty Act, passed the fourteenth of June, 1751, respecting the Duties imposed thereby, viz. That "what-ever Surplus shall be remaining of the said Duties, after paying the several Demands and Outgoings by this Act directed, every such Surplus shall be carefully retained by the said Public Treasurer, until appropriated by the General Assembly."

Similar Provisions are made by divers other Acts; which demonstrably prove, that Surplus and unapplied Monies in the Treasury cannot be drawn thereout by a Vote and Order of the Commons House alone,

A little reflection must convince every Man, that the Power contended for by the Commons House is of so dangerous a nature in itself, as affords a strong argument against the existence of such Power; for if the Lower House may so Vote and Order Monies out of the Treasury, which are granted to His Majesty, and that by their own Authority, may not the same Power be assumed by a Governor, or the Council, or both unitedly, to answer a Job, or to accomplish a favourite Plan, independent of the People's Representatives?—and the rather, when it is considered that, by the King's Twenty-second Instruction, as entered in the Council Journals, the Governor “is directed not to suffer any Public Money whatsoever to be issued and disposed of, otherwise than by Warrant under his Hand, by, and with, the advice and consent of the Council.”

If the matter is taken up on ideas of common sense, it is doing no violence to our understandings to suppose, that a Governor may issue Monies by his own Order, as representing His Majesty, to whom the same were granted; but that the Commons, who have granted the Money, shall still retain a power over it, repossess themselves of it, and apply it at their pleasure, for a good reason or a bad one, or for no reason at all, surpasses all human comprehension.

Happy, however, is our case, that the present subject does not rest upon Opinion merely, but is determinable by the Principles of that Constitution, which ought to be the pride and glory of all the Subjects of His Majesty's Dominions. The true excellence \* of the English Government consists in this, “that all the parts of it form a

\* : Blackst. 154.

“ mutual check, upon each other.—In the Legislature, the People are a check upon the Nobility, and the Nobility a check upon the People, by the mutual privilege of rejecting what the other has resolved; while the King is a check upon both; which preserves the executive power from encroachments.”

In this view it is, that His Majesty has interposed His Royal Authority, by an *Additional Instruction* to His Governor, grounded upon an actual, dangerous, and unconstitutional Encroachment of the Commons House of Assembly, in the manner stated in these sheets.—This has been done by way of *check*; and in order to prevent a practice so unwarrantable, and that the wound thereby given to the Constitution may be healed, the Instruction must be viewed in the light of a *timely Correction* by the Executive Power, and as a *call* and *admonition* to a Third Branch of the Legislature to return to first principles, from which they had so improperly departed; and is also intended to prevent in future, what seems, to the Royal Judgement, an undue Encroachment: it is, therefore, injurious to consider this Act of Government merely as a Direction to the Commons House of this Colony, how, and in what manner, they shall frame and originate a Money Bill; because the King only tells them of their departure from the Constitution; points out the proper practice, as grounded thereon; and, by thus interposing, and prohibiting His Representative from giving His Assent improperly, and upon unfit occasions, as also to remedy the evil complained of with so much justice, His Majesty has done no more than exercised *that Act* of Sovereignty given Him by the Constitution, for the purpose of maintaining the Just Balance of the State,



The distinction is extremely obvious, between an Instruction given as a rule of conduct to the several Branches of the Legislature, upon a point of departure from acknowledged principles, and an Instruction which contains new-fangled ideas, not warranted by, or known to, the Constitution. — The one is only a *Remembrancer*, as it were, reminding them what the Constitution is, and giving them a rule for adhering to it; which is the regular check lodged in the King's hands to prevent Encroachment; whereas the other would be irregular, and favour of the nature of a trespass: and a *novel Invention*, from whatever quarter, is an innovation upon the other Branches of the Legislature. Keeping these observations in view, every popular argument against the King's Instructions, as being only a rule to His *Governor*, and that the People are not to be *Instructed*, must fall to the ground, as inconclusive and foreign to the point.

I know that many People, finding no warrant for the practice contended for by the Assembly, either in the Proceedings of Parliament, or in the Constitution of our Country, have immediate recourse to the usage of the Province for a series of years, without controul or interruption; and to those who skim over a dispute, without weighing the force of the several arguments, this assertion may be considered as a good plea in favour of the practice; and therefore I think it my duty to offer a few words on the only feasible pretence which the advocates for it can set up.

It is very true, that, for several years antecedent to the year 1737, the Commons House have ordered Monies to be advanced by the Treasurer, without the concurrence of the Council and assent of the Governor; but from that period, no such mode prevailed, till the year 1751, or

1752 ; and since that time many Orders occur, some sent for concurrence, and many not. This difference of proceeding points out a distinction ; for where they have ordered Monies arising from appropriated Funds which have not been wanted, the Council's concurrence and the Governor's assent have been applied for : but where the Orders have been general, they have gone upon a sort of idea, That there were Surplusages and Balances sufficient to satisfy the Order without any intermediate Inconvenience, till the same could be replaced by a Public Tax-Bill ; and I cannot in any other way account for the course of practice which has at different times prevailed.

In order to combat these Facts, let us previously reflect what slow advances *Infant Societies* of Men make towards Regularity or Perfection ; that in the first outset they are occupied in providing for their necessary wants, and securing their protection ; the niceties and punctilios of Public Business never enter their heads, till they have brought their Colony to such an outward state that they feel some *Self-conceit* has crept into their hearts ; then it is that Men begin to give the polish to their Acts, and to be emulous of Fame : the Precedents, therefore, of new Communities are of very little weight ; and whatever rank they bear, the influence they ought to have must be proportioned to the prevailing Uniformity of Practice, which is the true badge of their Importance ; for when there is any long Interruption to, or Discontinuance of, a Practice, the fluctuation creates Embarrassments, and puzzles the Understanding, without leading the Mind to any determinate conclusion on the point.

But granting for once, that a particular mode has been adopted for a series of years without

interruption or controul, Time gives no sanction to Acts illegal in themselves; and when Inconveniencies arise, and the *Blot* is hit, the Merit of the Practice is then called in question, and it is tried and must be determined by the Laws and Constitution of our Country. In like manner Public Rights, of what nature soever they are, (tho' dormant for a time) can never be extinguished, except by the Power that first created them; and the continuance of a practice on no better foundation than *Indulgence*, confers no permanent and durable title; mere permission being a tenure at will: the Man is in possession one month, and the Lord of the soil may eject him the next.

The instances wherein the pretended practice has prevailed may be safely admitted, to shew the impropriety of the like practice in the present case; for every one will readily allow, that altho' it may be pardonable for Public Bodies to relax somewhat in favour of the State, yet it by no means follows, that they may do so on occasions unworthy of *Indulgence*. The instances which the Assembly can cite for granting Orders by their *sole Authority*, refer to Payments to their Governor for Indian Uses, Local Services, Salaries of Clergy advanced on particular occasions, Furniture for the State House, Books for the Assembly, for the Silk Manufactory, and the like. And shall such Precedents be urged in defence of Orders made in like form on behalf of *Clubs*, and *idle fantastic Measures*? for conceits of flimsy Politicians, and to indulge a Spirit of Faction and Disorder in the Metropolis of our Sovereign's Kingdom? Can we with any face plead Precedents of honourable tendency to support the most wanton acts of passion and intemperance? Is it possible for men to be so blinded by prejudice and passion, that Precedents



dents for doing real and substantial *Good* shall be urged in argument to promote the cause of *Evil*? Alas! Reason has but little influence in the favourite schemes of State Intrigues! All the kind and benevolent affections are at rest; the souls of men are perturbed! Disorder and Distraction take the lead! and every faculty is awakened to breed confusion and distrust! It is amazing to reflect what baneful effects are wrought by Political *Manœuvres*! the Social and Benevolent Spirits retire; and men for the most part lose their Humanity together with their Sense and Understanding. Oh *Politics*! how ye deform the Human Soul! blunt Natural Affection! sow the foul Seeds of Hatred and Ill-will! confound the Laws of Right and Wrong, making our Journey through Life a painful Pilgrimage indeed!

It is a matter of doubt with me, whether the folly of the Vote, or the folly of persisting in it after conviction of its impropriety, is the greatest. There is something very singular in the whole of this affair; for I have been told, that those who adopted the measure, and decline the defence of it; who frankly own, in their private situations, that nothing of the like kind will be done in future; who very unreservedly admit it was an hasty business, and that they heartily repent it; are of sentiments expressly opposite to these declarations, in their Public Station; and with the utmost vehemence declare, that they never will give up the point, or pass a Tax-Act whilst the Royal Instruction stands as an obstacle in the way. If the measure cannot be justified upon the Principles of the Constitution, common Prudence directs us quietly to relinquish what we cannot hold; and it is no disgrace for Public Bodies of Men to retract any Tenet, especially

especially when it is either dangerous or improper to maintain it. The dispute lies between the King and the Delegates of the People; and the question now is simply this: Whether the King is to recall or vacate his Instruction; or the People submit to a check for an unconstitutional Application of the Public Treasure? Justice as well as Prudence require us to yield the point. On firm ground we may safely tread; but to persist in opposition to a timely and regular interposition, is to me an obstinacy highly culpable, and altogether unbecoming. Perhaps to high Spirits, concessions of any kind are mortal stings; but if there must be a degree of condescension in some quarter, before tranquility can be restored to an afflicted Province, surely it is most reasonable to expect, that Duty to the King should influence the People to make the first advances; and the rather, as an opposition in the present case will inevitably affect the most essential Interests of the Colony, by retarding its Growth, weakening its Credit, and encreasing its Distractions. — No part of the King's Dominions can be injured by this local difference, nor is the great Machine of Government in the least affected by it; the punishment is as local as the dispute itself; the People of the Colony alone suffer in the cause, which no wise man can think a good one.

It is rather an odd circumstance, that we have no certain information what became of the 1500l. after it was paid into the hands of the *Patriotic Club*. That it was spent remains no doubt; but How, is the great mysterious Question. Whether it was applied to pay the *Tavern Score*, or to satisfy the hungry Creditors of some *half-starved Patriot*, are problems to puzzle the wise heads of those who gave it; but to me nothing

is more strange and unaccountable than the great reserve which all Parties have maintained respecting this *unprecedented Benevolence*. I have not been able to learn what the venerable Supporters seriously thought in relation to this Gift. That they laughed at it, and enjoyed the joke, I can readily suppose: that they passed a sneer upon it, and pronounced it an *idle Affair*; that they ridiculed the Credulity of the Donors, and admired their Faith, I can easily believe; but it is not possible to carry our conjectures any farther.

Some inquisitive folks have been very restless to know what sort of grateful acknowledgments the Club have paid to the House of Assembly for this generous Donation; but it is as curious to reflect, that the *Silence* is equally as *sullen* on one side of the water, as it is on the other. I cannot learn from authority, that even the poor *unavailing Tribute* of Thanks has been returned for all this *Legislative Kindness*. There is a great shamefacedness on both sides, in the course of this Transaction. The Club either knew not how to express their sense of the Favour; or their sincerity, as men, would not allow them to pay a sacrifice which (tho' gainers by the Grant) their Hearts must disapprove; and I am firmly persuaded in my own mind, they were afraid to expose themselves by returning thanks: and the House, I have reason to believe, are better pleased without them.—Thus it is when Public or Private Bodies of Men play a loose Game; both sides are always shy, and the only way to avoid a total rupture is to preserve, if possible, the same kind of happy distance that has been between the House and the Club; there being no real Danger, except when jarring Bodies meet in contact.

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The money has been voted and spent, and the Society which received it is now no more! The *Great Charter*, the *Bill of Rights*, the *Habeas Corpus Act*, the *Constitution itself*, are left to the wide World to fight their own Battles, and maintain their own Ground! The *Supporters* have given way, and their strength is as exhausted as their Purse! Their Friends the House have nothing more to give; and 'tis thought they have long repented what is given! What a melancholy state of things is this! But how blessed a condition, compared to the miserable and forlorn situation of a Colony which now feels the evil effects of ill-directed Zeal!

I come now to consider a new stroke of Provincial Politics, and the last-distinguishing Effort of the Colony of South Carolina, in the great attempt of establishing a Character of Originality; an idea so very flattering to the Human Mind!

The Legislature stood prorogued to the Month of August 1773; and the old obstacle still being in the way, and the Lieutenant Governor seeing little prospect of doing business, opened the Session by a Message to each House, to save a piece of idle pageantry, and the formality of a public Speech.

A few days passed, and one or two Bills were sent by the Lower to the Upper House, which were ordered to lie upon the table for the most cogent and prudential reasons.—The Upper House, anxious for the Public Credit, and deploring the miserable state of the Colony Affairs, owing to the above unhappy dispute, judged it highly expedient to enquire into the true state of the Public Treasury, in order to guard against Accidents, and to provide in due time for the Public Safety. One of the Treasurers being examined

amined, gave such a melancholy detail, that the Upper House addressed the Governor upon the subject, for the purpose of calling in 50,000l. Currency, in order to keep the Treasury in a proper course of circulation. As this Enquiry discovered the weakness of our State, the Commons House entered into some violent Resolutions; and by a message to the Governor on the subject of the Council's Address, attempted to charge them with having given an improper state of the Treasury Accounts: but the Upper House not choosing to submit to the imputation of having deceived the Public, prosecuted the Enquiry still further, and demonstrated the Truths contained in their Address, which the Assembly have not since attempted to disapprove. In the course of this Session, a Protest of an extraordinary nature was entered in the Upper House Journals by Two Members; which having a manifest tendency to reflect upon the Proceedings of the House, and the same being printed by one Thomas Powel in the South Carolina Gazette, without any leave or permission from the House, this matter was taken up as a gross Contempt, and Breach of Privilege; and the Printer being sent for and acknowledging the fact, and declining to give proper satisfaction to the House, he was thereupon committed by virtue of a Warrant under the Hand of the President, Sir Egerton Leigh, Baronet, the 31st of August 1773; which Warrant was by the express Order of the House. — On the 3d of September the said Thomas Powel was discharged from his confinement, upon a return of the Cause of Commitment by the Sheriff on the back of an Habeas Corpus, issued by the Honourable Rawlins Lowndes, Speaker, and George Gabriel Powel, Esq. another Member of Assembly, pursuant to an Act of Assembly

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passed the 12th of December 1712, empowering Two Justices (*Quorum Unus*) to put in force the Habeas Corpus Act to all Intents, Construtions, and Purposes, as fully as the same can be put in execution in his Majesty's Kingdom of England. The Justices judicially declared the Council to be no *Upper House of Assembly*, and therefore held the Commitment illegal, and of course discharged him. The Council applied to the Assembly for redress against their Members; but they, instead of complying with the request, entered into several pointed Resolutions, avowed the same Doctrine which the Justices had broached, approved their Decision, returned the Thanks of the House to them for the same, and agreed to address the Governor to suspend those Members who had voted the Commitment; and also to address His Majesty for their Removal: and on the 13th of September they addressed the Governor accordingly, who very properly judged the subject too important to be determined by him; and the rather, as the affair is to be laid before the King. The Council, finding such new Doctrines adopted by the Lower House, and perceiving that the Constitution was, in effect, subverted by these proceedings, lost no time in stating these Grievances in a suitable Address to His Majesty: they likewise addressed his Honour the Lieutenant Governor the same day, and requested him to transmit the Address, and other papers referred to, to the Secretary of State for the American Department, in order to be laid before His Majesty. The Lieutenant Governor, by his answer, undertook to transmit them according to their request; and this Session being a most *noisy* and *disturbed one*, and every popular subject being brought to a happy conclusion, though somewhat interrupted by the Lieutenant Governor



Governor declining to Suspend, agreeable to the modest expectations of the Lower House, they desired leave to adjourn till January next, to which time they stand adjourned accordingly.

Having given a Narrative of the Proceedings of this extraordinary Session, I shall now examine the pretensions of the Council to take upon them the Powers of an Upper House in the Legislature of this Country, and make some general Observations on the Constitution of the Colony, as formed on the British Model.

Upon the absolute Surrender of this Soil by the Lords Proprietors to his late Majesty, in the year 1729, for the Considerations agreed on, and confirmed by Act of Parliament, the Colony of South Carolina vested in His Majesty; and consequently he had a full right to give a Constitution, and to form such Establishments as were agreeable to the Laws and Practice of his own Kingdom: He was pleased therefore to appoint a Governor by Commission under the Great Seal of England, by which his Powers were precisely ascertained, and whereby he was authorised to call Assemblies composed of the Freeholders of the Colony, &c.; and the very last Commission, which was to Lord Charles Montague so lately as 1766, contains the following clause, viz.

“ And that you, &c. with the consent of  
 “ our said Council and Assembly, or the major  
 “ part of them *respectively*, shall have full Power  
 “ and Authority to make, constitute, and ordain  
 “ Laws, Statutes, and Ordinances, for the  
 “ Public Peace, Welfare, and Good Government  
 “ of the said Province, and the People  
 “ thereof, and such others as shall resort there-  
 “ to; and for the Benefit of Us, our Heirs  
 “ and Successors; which said Laws, Statutes,

“ and Ordinances, are not to be repugnant, but;  
 “ as near as may be, agreeable to the Laws and  
 “ Statutes of this our Kingdom of Great  
 “ Britain.”

The King's Pleasure is also more largely and specially set forth in a Body of Instructions, containing every necessary Power and Rule of Direction for the better Government of his Colony; and the Names of all the Council are particularly specified in the said Instructions.

The Members of the Council are severally appointed by the King's *Mandamus*, or *Letter* to his Governor, directing him to swear in, and admit such a one to be of His Majesty's Council of the said Province; and by virtue thereof, they are merely Counsellors of State, to whom the Governor for the time being applies for advice in cases of weight and moment.

This Council of State, consisting of Twelve Persons, are named in the King's Instructions to his Governor, as expressed in the Clause above-mentioned; and this additional plan of Duty pointed out by His Majesty, is surely no more inconsistent or incompatible, than the power given to the Governor and Council by Act of Assembly to be a Court of Chancery can be so deemed. One sett of men may have various Jurisdictions; and the circumstance of the same People acting in separate and distinct situations may be as easily reconciled, as that a Priest shall be at one time in the *Desk*, and at another in the *Pulpit*: the nature of the Offices differ in the *Mode* of performance, but the *End* is just the same.

The Clause above-mentioned almost in positive words declares Three distinct and separate Branches of the Legislature: “ That you, (meaning the Governor) with the consent of our  
 “ said Council and Assembly, or the major part  
 of

“ of them *respectively*, shall have power and authority to make, ordain Laws, &c.” which terms as *individually* distinguish, and mark out, Three independent and distinct States, as language can express.—Besides, these different Powers are derived to them by distinct Instruments: those of a Privy Council, by Mandamus; and those of a Legislature, by the King’s Commission and Instructions to His Governor. I never was able to comprehend, how the Commons House of Assembly presumed to liken themselves to the House of Commons of Great Britain, and then drop all sight of that Model from which the other Branches of our Subordinate Legislature are manifestly taken; for it is by virtue of the Governor’s Commission that the Freeholders of the People are called in Assembly, and by the King’s writ, signed by the Governor and the Members of His Majesty’s Council; and therefore all those eminent Rights they so much value themselves upon, were, in fact, originally conveyed to them through the very same medium as those of the Council in Assembly, which are now fixed and established by Laws suited to our local circumstances, and which were framed under the King’s Royal Prerogative and Licence. Our Constitution is *derivative*, and entirely flows from the Crown, is wholly *ex gratiâ*, and, therefore, subject to such modifications upon Constitutional Principles, as His Majesty shall, from time to time, in His Royal Wisdom, see proper and expedient; provided, also, that they are not repugnant to any subsisting Laws.

The Rights and Privileges of the Commons House are neither created nor recognized by any Statute of Great Britain; they arise, as it were, by grant from the Crown; their Legislature owes its establishment to the King; and every claim they



they set up, springs to them from the same medium through which the Council derive theirs: This being the true state of a plain fact; it follows as a consequence; that when the Crown gave permission to call an Assembly, they surely might appoint a Council; and lawfully invest them with the powers expressed in His Majesty's Commission and Instructions; and the rather, when we call to mind that the People of this Country made humble suit to His Majesty King George the First, in the year 1721, to take them under His Royal Protection and Government, by renouncing their Charter Rights under the Proprietary Constitution; and this change being effected at their own instance; and afterwards by a clear purchase on the part of the Crown for a valuable consideration; and by an absolute surrender by the Lords Proprietors, in 1729, the Power who embraced them in order to protect them, could alone give motion and activity to them, as a Colony, or distant Member of the Parent State.

When the Crown had thus taken the Government of this Colony upon them, and had appointed Francis Nicholson, Esq. Provisional Governor thereof, the Assembly passed an Act of Recognition, on the 18th of August, 1721, which recites, that "whereas His Most Sacred Majesty  
 " had been graciously pleased, at the humble de-  
 " sire and request of His faithful Subjects of  
 " this Province, to take the same under His Ma-  
 " jesty's most gracious and immediate Govern-  
 " ment and Protection; and had also been pleas-  
 " ed to Commissionate, under the Great Seal of  
 " Great Britain, Francis Nicholson, Esq. Go-  
 " vernor, &c. over the same, *with full Powers to*  
 " *call a General Assembly, &c.* and that they with  
 " one voice and heart did acknowledge His Ma-  
 " jesty's

“ Majesty’s most lawful and undoubted Right to the  
 “ said Province; therefore, in gratitude, they  
 “ prayed, that it might be enacted by His Ma-  
 “ jesty, by, and with, the consent of the Gover-  
 “ nor, Council, and Assembly, that they do re-  
 “ cognize His said Majesty to be of right, and,  
 “ by the Laws of Great Britain, is Sovereign  
 “ Lord and King, &c. &c.”

This Act of Recognition expressly shews, that the *Powers to Call a General Assembly*, originated with the King himself. With what face, then, can Gentlemen deny those Rights to His Majesty’s Council (who bear a share in the Legislature of the Country under the same Authority by which they themselves are allowed to sit), so essentially necessary to support their proper dignity and consequence as Legislators?

By the eleventh section of a Provincial Act, passed in 1721, it is enacted, “ That the Mem-  
 “ bers of Assembly chosen by that Act, shall  
 “ have as much Power and Privilege, to all  
 “ Intents and Purposes, as any Members of As-  
 “ sembly theretofore had, provided the same are  
 “ such as are according to His Majesty’s *Thirty-  
 “ fifth Instruction*.” Can any thing more decisively point out the sense of that Dependence upon the Crown, which the People at that time of day entertained, than this extraordinary Provision, which virtually declares the Power of the Crown to bind us by Instructions?—And the Act in a manner incorporates the same, by excepting those cases of Privilege which this Instruction so flatly disallows; and in points, too, of the most delicate nature, and which remain undecided upon to this day, between the Lords and Commons of Great Britain.

The Thirty-fifth Instruction to Governor Nicholson, which I believe is continued to the present

sent day, runs in the following words: " And  
 " whereas the Members of several Assemblies in  
 " the Plantations, have frequently assumed to  
 " themselves Privileges no ways belonging to  
 " them; especially of being protected from Suits  
 " at Law, during the term they remain of the  
 " Assembly, to the great prejudice of the Cre-  
 " ditors, and the obstruction of Justice; — and  
 " some of the Assemblies have presumed to ad-  
 " journ themselves at pleasure, without leave from  
 " our Governor first obtained; and others have  
 " taken upon them the sole framing of Money-  
 " Bills, refusing to let the Council alter or a-  
 " mend the same; all which practices are very  
 " detrimental to our Prerogative: If, upon your  
 " calling an Assembly in South Carolina, you  
 " find them insist upon any of the abovesaid Pri-  
 " vileges, you are to signify to them, that it is  
 " our express Will and Pleasure, that you do  
 " not allow any Protection to any Member of  
 " the Council or Assembly, further than in their  
 " persons; and That only during the Sitting of  
 " the Assembly; and that you are not to allow  
 " them to adjourn themselves otherwise than *de*  
 " *die in diem*, except for Sundays and Holidays,  
 " without leave from you, or the Commander in  
 " Chief for the time, being first obtained.—It  
 " is also our further Pleasure, that the Council  
 " have the like power of framing Money-Bills  
 " as the Assembly; and you are expressly enjoined  
 " not to allow the said Assembly, or any of  
 " the Members thereof, any Power or Privilege  
 " whatsoever, which is not allowed by Us to the  
 " House of Commons, or the Members thereof,  
 " in Great Britain."

The Privileges expressed in this Instruction were enjoyed by the Council, without Interruption, till 1735, when the Assembly claimed a  
 sole



sole and exclusive Right of framing Money-Bills, and which they have, at different periods since that time, continued to assert and maintain.

This Instruction relates entirely to Legislative Business, and the Privileges of the Members of Assembly, and forbids the Governor to allow protection to any Member of the Council or Assembly, further than in their Persons, &c. Now, as mere Counsellors protection is out of the case, neither has the framing of Money Bills any thing to do with their station, as Members of the Privy Council; from whence it is evident beyond a doubt, that the Council form one Branch of the Legislature of this Country, and must be viewed as a separate and distinct Body both from the Governor and Assembly, because the Council have a concurrent power with the Assembly to frame Money Bills, &c. which shews a *distinctness* of Legislative Jurisdiction; and the Governor (till Assent is necessary) has no part allotted him to act, except that he is to keep the Members within due bounds of Privilege under the terms of his Instruction.

Privilege is a term inapplicable to the Council sitting as a Privy Council; for in that character they possess not a single privilege by their Constitution, and very few by the Laws of the Province; and all the privileges of His Majesty's Privy Council at home, consist in that security which certain Laws give them against attempts and conspiracies to destroy their lives. The term Privilege, therefore, in this Instruction, points directly to the Members of Council exercising Legislative Duties; in which station alone, the Council apprehend they are entitled to any privilege or personal protection.

That no man may entertain a conceit, that in reciting and discussing this *Thirty-fifth Instruction*, I thereby mean to set up the King's Instructions generally to His Governors in America, as Laws and Constitutions by which the Colonists are or ought to be governed; I shall plainly tell my Reader all I wish to infer, viz. That the King when he gave Power to call an Assembly, at the same time, and by the same public Instruments, established in His Council a Right of Legislation, as a distinct Body from the Commons House: That the whole scope of the King's Commission and Instructions manifestly shews, that the Assembly derive their powers from the same fountain that the Council do; that our Government is clearly derivative; and that, without the King's Grace, we had been destitute of any Constitution whatsoever: That our Provincial Legislature, by the first Election-Act, passed in 1721, after His Majesty had taken this Colony under his own immediate protection, plainly shews, that they entertained this sense of the matter, by declaring that the Members shall have as much privilege as heretofore, provided the same are such as are according to His Majesty's *Thirty-fifth Instruction*. What is this exception, or saving, but a clear acknowledgement that the King, by His Instruction, might direct in the way stated, that the power of modifying the Government of His Colony was in His hands. And I appeal to the uniform practice, from 1721 to 1735, as an irrefragable argument in support of the Council's Legislative Rights, when they were allowed to frame, alter, and amend Money Bills, by virtue of this Instruction.

It is a rule in construing a Statute\*, to pay great regard to the construction which the Sages of Law, who lived about the time, or soon after, it was made, did put upon it; because they were best able to judge of the intention of the Makers thereof: for it is a maxim, that *Contemporanea expositio est fortissima in Lege*. Now I produce the King's Commission and Instruction, upon the establishment of this Colony as a Royal Government, to prove His Power over it in the instances mentioned; and agreeable to the above maxim, I give you not merely judicial decisions, but the judgment of the Legislators themselves who lived at that time, implored the protection of that Power which they afterwards expressly acknowledged, who adopted the Instruction which so limited and restrained them, and so mightily enlarged and extended the powers of the Council, and who submitted to these Royal Regulations by conforming their practice wholly to them.

That the Council have a Legislative Right, as a Second Branch, appears, not only from constant experience, but also from the stile and expression of our Laws.

In 1722 was passed an Act with the following title: "An Estimate † of the Charges of the Government, that is and will be due on the twenty-fifth of March next, 1723, to be provided for by the General Assembly, and agreed to by the Committee of *Both Houses* appointed for that purpose."

An Act of Assembly passed the fifth of February, 1736-7, for laying an Embargo on Ships or Vessels; and the Preamble opens in the following words: "Whereas the *Legislative Powers* of this Province have received Advice, that a

\* 2 Inst. 11, 136, 181.  
p. 405.

† Trott's Carolina Laws,



“ dangerous Scheme is formed by certain Subjects of the King of Spain, &c.”

Many of the Laws passed at that time in the Enacting part say, “ By the Governor, by and with the Advice and Consent of the Council and the Representatives ;” and others express, “ by the Governor and the Council, and the Representatives convened in General Assembly.”

If we examine the King’s Disallowance, or Repeal, of the Acts of Assembly, about the same period, this point will be more clearly established. The Repeal opens thus \* : “ Whereas by Commission under the Great Seal of Great Britain, the Governor, Council, and Assembly, are authorized and impowered to make, constitute, and ordain Laws, &c. for the peace, welfare, and good government, of the Province, &c.”

The Governor has an Instruction requiring him to observe, that in passing all Laws, the style of Enacting the same be, *by the Governor, Council, and Assembly*.—And to what end was such a direction given, but to preserve *that style*, which so clearly expressed the distinct Bodies, whose respective concurrence and assent were declared necessary for making Laws, &c. ? The Governor is likewise enjoined to transmit home all Laws, with the several dates, or respective times, when the same *passed the Assembly, the Council, and received his Assent*. Is it possible to express the *Individuality*, if I may be allowed the phrase, of the several Branches, in more clear and positive Terms ? Do not the words denote Three separate and distinct Parties ; and That too as precisely as any Deed tripartite in Law ? Is it not evident beyond a doubt, that

\* Trott’s Carolina Laws, p. 397.

every Act must pass the Assembly, pass the Council, and have the Governor's Assent to the perfection of it? These different stages strongly point at the *Model* from which our Subordinate Legislature is taken; and the features bear as strong a resemblance to the Constitution of our Mother-Country, as those of an Infant can be likened to the stronger lines of an aged Parent: the similitude may be traced in both cases, with only certain circumstantial Differences; such as must necessarily distinguish Infancy from Age, Maturity from Childhood, Strength from Weakness.

By an Act of Assembly passed in the year 1736, for ascertaining Public Officers Fees, those of the Clerk of the Council are also enumerated; and in a separate Division next immediately following is this Title:

“ *The Clerk of the Council in Assembly his Fees.*”  
Amongst the several allowances are, for “ a *Warrant of Contempt*, Ten Shillings; and a *Release-ment* therefrom, Five Shillings.”

By another Fee-Law passed the 7th of May 1743, the like provisions are made for the same Officer, with an Increase of Ten Shillings on a Warrant of Contempt. True it is, that this Law has never been confirmed by his Majesty; but it proves as strongly what it is cited to shew, viz. the Sense of the People's Representatives, in relation to the Rank and Condition which the Council hold in the Legislature of the Colony.

Many of the Acts of Assembly sufficiently evince, that the Council were till lately ever considered as one Branch of the Provincial Legislature; and the language of the Lower House on different occasions confirms this Doctrine, if any thing is wanting to support it. I appeal to their own Journals of the 11th of May 1754, wherein it will appear, that the Assembly, in  
their

their Address to the Governor, take notice of his Affection and Regard for the Welfare of the Province lately expressed in his Excellency's Speech to *both Houses*.

I must here desire my Reader to go back some pages, and take another view of the King's additional Instruction to his Governor, and he will there find that His Majesty, throughout the same, denominates the People's Representatives by the stile of the *Lower House*; which, *vi termini*, implies an Upper House or Superior Body, to which that Title must bear immediate reference and respect. Upon the whole, I think these Conclusions may be fairly drawn from the several Facts above-stated: That it was His Majesty's Intention to assimilate the Constitution of this Colony to that of Great Britain, so far as the local circumstances and situations of things could possibly admit: That it was his Royal Will to establish Three distinct States, in the Persons of a Governor, a Council, and Assembly: That divers Acts of the Colony Legislature maintain the same Distinction: That Uniform Experience hath preserved the like Idea; and that the Legislative Powers of the Council have been virtually, and almost expressly, recognized and declared by positive Laws, and by the Language and Stile of Public Papers, as appears by the Journals of Assembly.

It may be proper further to observe, that Bills have originated in the Council, as well as in the Assembly; though it must be owned, the practice has not been frequent: however, the Assembly, after a second reading of a Bill, always send it to the Council by two of their own Members; and when twice read, and perhaps altered and amended, the Council return it by the Master in Chancery. When it has undergone a third reading, and been passed by the Assembly, it is in like manner



manner brought up again to his Majesty's Council, who, upon the third reading, either pass or reject the same; and if passed, it is carried back to the Commons House, who direct the same to be ingrossed: and at the end of the Session the Three States, viz. Governor, Council, and Assembly, meet in the Council Chamber, when the Speaker of the Assembly reads the Title of the Act, and then presents it for the Governor's Assent: this being given, the Speaker signs it, as also the Governor, who likewise seals it.

Thus it manifestly appears, that there are Two separate Bodies of Men, who, in a Parliamentary way, mature the several Laws which concern the welfare of the Province; and though, perhaps, the mode of doing business may differ in certain circumstantial points from the practice of both Houses of Parliament, yet true it is, that, in substance, the Proceedings are the same; and as all Bills, for the most part, take their rise in the Lower House, the Council, by the Practice which prevails, have a negative in every case, upon the several Acts of the House of Representatives; as *they* would have upon those of the Council, which might originate with them; and as the Governor, in his Executive Situation, *has* both upon Council and Assembly.

This is a Picture not unlike to the British Plan of Government; and the Resemblance is so striking, that men have been led to compare it to that great Model of Perfection—not urged thereto by arrogant Presumption, but excited by the Love and Veneration which they bear to the most glorious Constitution in the World; from an honest pride to claim alliance to *it*; from a firm persuasion of the Blessings flowing from *it*; from a pleasing reflection, that we are the genuine Sons and Daughters of Britain, Descendants

dants from the Loins, and kindred Members of the same State; from a full conviction, that our own Happiness will be best secured by adopting the same Maxims, and embracing the same Laws. Hence it is, that a Governor is said to represent the King; the Council, the House of Lords; and the People's Representatives, the House of Commons of Great Britain. And where is the Arrogance of this innocent and natural Allusion? Every Man of Sense must know, that the Powers and Extent of Jurisdiction belonging to the King, Lords, and Commons, are so immensely great, and so inexpressibly transcendent, that none of the works of Men can be properly compared to this stupendous Machine, so knit and so connected as to animate and sustain a System of its own.

No man of common understanding can draw the comparison, without perceiving most sensibly the immense differences and distinctions that arise upon the comparison; but when we consider ourselves as Members of one great Empire, and that our Colonies have a Legislature of their own to regulate their interior Polity, we are struck with admiration of the British Plan in this little epitome thereof exhibited in ours. We view a Governor, and find, upon examination, that his Power flows from the King; that he represents Him, and exercises certain Acts of inferior Regality, and is possessed of the whole Executive Power of Government in our contracted sphere. We proceed, and find that a Council named by the King, act Legislatively, as a Second or Middle Branch, between the Sovereign and People; and we instantly figure to our minds a House of Lords. We behold a House of Representatives chosen by the People, engaged in framing Laws, laying Taxes, and regulating the Affairs of this Community,

Community with the concurrence and consent of the other two Branches; and we as readily form an idea of the House of Commons. The Outlines of Government agree in both cases; and I defy any Man to say, They are not substantially the same, so far as local circumstances will admit, and a narrow circle of Duty will allow; and saving also, certain eminent Distinctions which can only belong to the Sovereign State.

Judge BLACKSTONE\*, speaking of the Colonies, thus expresses himself: "The Form of Government in most of them is borrowed from that of England; they have a Governor named by the King, or, in some Proprietary Colonies, by the Proprietor, who is his Representative, or Deputy. They have Courts of Justice of their own, from whose Decisions an Appeal lies to the King in Council, here in England. Their General Assembly, which are their House of Commons, together with *their Council of State*, being their *Upper House*, with the concurrence of the King, or his Representative the Governor, make Laws suited to their own Emergencies."

Having, I hope, satisfactorily proved, that the Council of this Colony are a Second or Middle Branch of our Provincial Legislature, and in fact an *Upper House* of Assembly, I propose to answer the several Popular Arguments suggested by a Spirit of Faction in some, and by Ignorance in others.

It is asserted, that the Council cannot be an Upper House of Legislature, in nature of a House of Lords, because they are appointed by the King, may be suspended by the Governor, and are removeable at the King's pleasure; because

\* 1. Blackstone, 108.



they are not endued with the same Rights and Privileges as the House of Lords ; and because they are not a permanent Body, and Independent of the Crown. I do not recollect that any thing more has ever been urged against the pretensions of the Council, but what falls under one or other of the points above suggested.

I conceive that the Council being appointed by the King, is an objection both idle and absurd ; because the Hereditary Counsellors of the Kingdom, the House of Lords, (which the pride of our Plebeians will not allow this Body to compare themselves to, even *distantly, restrictively, or metaphorically*) are raised to those dignities by the immediate grace and favour of the Crown. It is the King who places Coronets on the Heads of his Subjects, and at a risk whether they will fit the Heads proposed to wear them ; all Honour flows from thence ; and if the appointment of the King lessens the consequence of One of his humble Council of South Carolina, it must operate equally against Coronets and Mitres. But it is said, that the Council may be suspended, and removed at pleasure. This situation, I must own, is precarious, and liable to great objection : however, when we reflect that it is merely *honorary*, attended with no profit, but much trouble, and more vexation ; when we consider, that scarce an instance can be found of any wanton or arbitrary exclusion, by the King's Governors, of a Member from his Seat in Council, and that the difficulty for the Crown to supply these Vacancies, under the various discouragements which attend the situation, is extremely great ; we shall have reason to conclude, that the Appointment is not altogether as Dependant, as suits some Men to represent. But granting it were as contended for, the power of the Counsellor remains the same ;  
his

his *Tenure* is precarious, and on that score his Virtue may be put to a severer trial; but still he has a clear Constitution to govern and direct him; and the Argument is no stronger against the Provincial Council, than against Provincial Judges: till very lately, the Judges of England were in little better condition themselves; and yet their Judicial Power was never questioned, or their Authority disputed.

A man may have as good an estate for years, during the term, as another who boasts a Fee Simple; and though the Council have no stated and determined duration, still I do insist, that the Power vested in them is just the same; it may be exercised with as much independance, as by a Peer of the Realm; and though in a more precarious way, and with greater peril to the Party, yet the objection stands good only against the *Tenure*, not against the extent of Power or Jurisdiction.

For my own part, I have ever been indifferent about the Stile and Title of the Council in their Legislative Rank, and have always thought it a matter of small moment, whether they were called, His Majesty's Council, The Council, The Board, or The Upper House. Names may be proper in some cases to signify Things; but Names can never confer Rights, or give a line of Jurisdiction; and therefore I have been satisfied with contemplating, that this Body enjoy Substantial Rights, and by their Negative and Controuling Power, in all Legislative Acts, are to be looked upon as maintaining a due Balance in the Constitution of our Miner State: it is therefore weak, nay, childish, to contend, that they are merely a Privy Council, when the whole Course and Order of the Legislative Proceedings distinguish them as one Superior Branch,

Many people argue, that although Bills are sent to the Council, and Public Business is transacted with them in a Parliamentary way, that still they are only a Council: they admit, indeed, their power to do certain Mechanical Acts, and to give their Concurrence or Dissent; but they flatly disallow them to be an Upper House, or that they are entitled to any of those Parliamentary Rights, Privileges, or Distinctions, which of necessity pertain to the several Branches of the State: they will graciously allow them all the drudgery and toil of a House, with a large portion of scurrility, invective, and abuse; but they cannot condescend to admit, that they enjoy any badges or ensigns of Authority, or that they possess, of right, a co-ercive power to punish in any case whatever.

The Council, considered merely as such, must consent as well as advise; and consequently their judgments are to be informed of every fact necessary for them to know, previous to their giving such consent. Now, if it is acknowledged, that Parliamentary practice is the most eligible mode of doing business, what reason can in justice be assigned, why they should not be allowed to hold a Legislative consequence; in fact, as well for their security, as for maintenance of their dignity; since they formally carry about them every appearance of a Legislature, by concurring in or rejecting, by altering or amending Bills, and by strictly pursuing the several modes of Parliamentary procedure? It seems pretty clear to me, that under these circumstances, it is more for the honour and credit of the Colony, to view the Council as an Upper House, in imitation of a Constitution which every one affects to admire; and nothing can be more absurd or unjust than to suppose, that His Majesty ever meant to im-

pose



pose burthens upon Persons, without intending at the same time to give them all necessary powers for their protection and support. And can any thing be more unreasonable than to contend, that the Members of Assembly, sitting on Legislative business at the West End of a Public Building, have, and enjoy, the Privileges of Members of the House of Commons; and that the Council deliberating on the same Business at the East End of the same House, in the same way, and to the same general end, and in every stage of which Business they have an equal Concurrence, and ultimately an absolute Negative on every Act of the Commons House; and yet *they* shall have no Privileges or Power of an Upper House, or Second Branch of the Legislature, but are to lie open and exposed to every species of insult, without the least shadow of power to punish or correct? The inequality under such a situation is so glaring, that the due equilibrium would be lost, and all Power would center in the House of Representatives.

In the course of my observations, I have been obliged to mention certain Instructions from the King to His Governor, as proofs of His Royal Intention, that the Constitution of the Colony should be assimilated to that of the Mother-Country; and it is my wish that I may be understood to mean that, in general, Instructions are mere Directions for the Governor's Conduct; but sometimes they are in addition to the Commission, and contain a more full explanation of the King's Pleasure, respecting the powers given in, and by, the said Commission, under the Great Seal; and therefore such Instructions may well be argued from, provided they are framed upon the principles of the English Constitution. And this naturally leads me to view the present subject in  
another

another light, and I think it must add greatly to strengthen the foregoing reasoning.

I lay it down as an undeniable proposition, That the King can give no other Constitution to His American Colonies, than one resembling that of England; no other plan of Civil Government can be instituted by virtue of any power under the Great Seal of that Kingdom: for when the Subjects of the Parent-State repaired to the Western World, they did not renounce their Connection with it.—The Colonies are not to be considered as conquered Countries, being parts and parcels of the British Empire, and settled by British Subjects; and they are the King's Plantations, but not His Conquests. By the 22d and 23d Car. II. c. 26, they are through the whole Act called the King's English Plantations: and in the tenth paragraph 'tis said, "Inasmuch as the Plantations are Inhabited with His Subjects of England."—And so in 15 Car. II. c. 7. s. 5. and 12 Car. II. c. 34. they are called Colonies and Plantations of this Kingdom of England.

No Man will be so hardy as to declare, that when the Subjects repaired to America, they therefore quitted the Laws and Constitution of their Country:—they could not relinquish their Natural Allegiance; and it was not in their power to do the other.—This is a Dominion belonging, not only to the Crown, but to the Realm of England, though not within the Territorial Realm. *Vaughan*, 350, says, that they follow England, and are a part of it.

That Allegiance continues, let the Subject go to the remotest Region of the King's Dominions, every one must readily admit; for which reason, the Laws must govern and protect him †: *unum*

† *Vaugh.* 402.

*trahit alterum.* Besides, the Great Seal extends to America, and a Writ of Error lies to all subordinate Dominions, of which the Plantations are held to be a part. Now to shew that this intimate Connection, this continuing and subsisting Dependence, were clearly understood about the time of the first Settlements in this Quarter of the World, I cannot omit taking notice, that in the Reign of Charles II. one of the Articles of Impeachment against Lord Chancellor Clarendon was, "*that he had introduced an Arbitrary Government into his Majesty's Plantations.*"

From these general Observations it seems very evident to me, that the Civil Establishments of this Colony, being made by the King *Jure Coronæ*, must be looked on as Authorities respectively bearing the Image of the like Powers in the Mother Country, and operating in all respects as such, as nearly as the local Condition of a subordinate and dependant Colony can enable them to do.

The Resemblance is still more striking when we take a View of the different Departments. We have Courts of Common Pleas and King's Bench, of Oyer and Terminer, of Chancery; as also a Court of Admiralty, and Ordinary for Probate of Wills and granting Administrations. We have Circuit Courts, Sheriffs, Coroners, Constables, and Justices of Peace; and these several Jurisdictions subsist by the same Authority, and for the same great ends, as the like Courts in England. Our Laws are principally those of England, in all the great Branches of Liberty, Property, and Personal Security; and the Mode of Practice is the Mode observed in England in all substantial Points. Our Legislature consists of the Governor, who represents the King; and he is Head of the Community. Our Council, consisting



sisting of Twelve Members (for want of a Nobility) form an Upper House; and the Lower House, which answers to the House of Commons, is composed of the Representatives of the People. These Three Bodies do the most important Acts of Legislation: they raise Money, impose Duties, and pass Laws, extending to the Lives, Liberty, and Property of the Subject; and many persons have suffered death by Laws of our Provincial Legislature, before the Royal Assent has been obtained.

By an Act of the Assembly, passed the 12th of December, 1712, entitled, "An Act to put in force in the Province of South Carolina, the several Statutes of the Kingdom of England, or South Britain, therein particularly mentioned; the Acts enumerated are not only declared to be in as full force, as if they had been specially enacted, and made for the said Province," or by any Assembly thereof, but also the Statutes referred to, or explaining such enumerated Statutes, and all the Statutes relating to the Allegiance, or declaring the Rights and Liberties of the Subjects, are made of the same Force.

The several Civil Officers are likewise declared to have the same Power and Authority of the like Officers in England. The Common Law itself is also made of force; and it is ordained, that the Courts of Record shall have the power of the King's and Queen's Court, mentioned in any of the said recited Acts.

This Civil Order of Government is surely a true Copy of our Mother-State, so far as the same can suit our dependant Situation; and what cruel Hand will attempt to spoil a single Feature of the Picture?

Upon

Upon a critical Survey, and nice Comparison, it must be owned, that the Piece, though it has merit, is not perfect : but the same objection will lie, with very great force, against the Original itself ; for, though much has been done to give strength and stability to the Constitution, much is still wanting to secure it. Every man knows the Faults of the one ; and therefore I shall briefly hint at the Imperfections of the other—with this humble request, That an Argument on the score of a Defect, may have no other byass than to shew, that the Copy wants some correction and amendment. —The grand Flaw in our Civil Establishment is, the Want of that Independance, so necessary to preserve the true Political Balance ; but when we regret this Want, let us patiently reflect, whether such a State of Independance can properly subsist, or, in the nature of things, suit our particular condition. The Governor holds the first Rank in our Legislature ; and though he represents the King, it will be found impossible that he can possess so large an Independance ; for he is but a *Delegate*, is only cloathed with certain limited Portions of the Royal Prerogative. His Consent to Laws is rather provisional, than final ; and, even in his Legislative Station, he is controuled by Instructions ; and, therefore, is a two-fold Character, as *Judge and Minister*.

The uncertain Tenure by which the Council hold their places, points out, likewise, the same want of Independance ; but is it a sound Argument to say, that because these two Bodies differ so widely, on comparison, from the King and House of Lords, that, therefore, they are no Branches of our Provincial Legislature ? This, indeed, is not asserted in relation to the Governor ; but it would hold equally strong against him, as against the Body to whom it is opposed, and con-

sequently, by proving too much, it actually proves nothing to the purpose. The question, properly put, is not, Whether each Body has as much Power as the like Bodies possess in the Kingdom of England, for this is neither possible, or necessary to our dependant State; but the true question is, Whether they do not respectively act in points of Legislation; and Independently too, of each other; and without one controuling, or unduly influencing the other? And I will be bold to say, They do; for they sit apart; and the Acts of the Council are not considered as the Acts of Individuals, but of the Body at large. The Independance, therefore, is decently enough maintained in a Constitutional View, between the several Powers acting separately within the Jurisdiction of the Colony; and the dependance is, strictly speaking, only as finally resting upon the King himself; or, in other words, both Governor and Council hold their places at the Will of the Crown, and yet, acting distinctly in the Colony, are independent of each other. I lay very little stress upon the circumstance of a Governor having it in his power to Suspend; because this is, in some degree, provided against by his Instructions; and arbitrary removals so seldom occur, that they can scarce be supposed to influence the present subject of dispute.

It is by no means necessary, that our Legislature should enjoy the same Extensive Rights, and Honorable Distinctions, as the Legislature of Great Britain; because we are subordinate to, and dependant upon, the Sovereign State. We move in a narrow Circle, and have little more to do than to take care of our Estates, preserve a decent Police, repair Churches, clear Cuts, make Drains, mend Roads, and Bridges, and Ourselves, which much require it, and to thank God for his Bounty,



ty; and the King for his Protection. And if we will but modestly see what a contracted Scheme this is, compared to the immense objects of a great Commercial Kingdom, having Territories in every Quarter of the Globe, we shall be better satisfied with our Condition, and find less fault with the several Orders of our little State, the importance whereof is proportioned very properly to the small and circumscribed circle, within which we have any part to act.

By this time I hope my Reader is convinced, that our Colony Constitution is borrowed from the English Model; and as all the parts bear so near a resemblance; as the King could give no Civil Government incompatible with, or repugnant to, His own; and as Reason points out, that the respective Branches of our Subordinate State, are intended to act in imitation of those from whom the whole plan is apparently derived; that therefore no exception will be taken to deprive one Body of Men of those Rights, which they ought to hold under the same Authority by which all the other Members of our Civil State hold and enjoy theirs.

Upon the whole of this enquiry, I think it must appear, that His Majesty's Council are a Middle Branch, or rather an Upper House of Legislature of the Colony of South Carolina.

When I seriously reflect, that the nearer we can resemble Ourselves to the Mother-Country, the more Honor will redound; and when I call to mind, that it ought to be our Glory and Ambition to preserve a good Understanding in that Quarter; I am amazed, beyond measure, to find such a spirit of Contradiction, and such untoward Sentiments prevail.

I cannot now entertain a doubt, that the Council are an *Upper House*; I am well convinced they

stand in that relation; and I must say, that the daring denial of this Power is a bold step towards a Dissolution of our Civil Government. It must be confessed, that the House of Assembly have pressed so sorely for many years upon this Second Branch, that it has made many respectable Persons *shy* of accepting what was formerly esteemed a Seat of Honor and Distinction. When the General Opinion proclaims, that a Place in Council is a kind of alienation from the concerns and interest of the People; that the Members are said to possess Rights which every Person in the Community is called upon to question; when they are represented as arrogating to themselves, powers which never were intended to be bestowed upon them, and there is no Tribunal on the Spot to decide the difference; when the part allotted them to act is made a mockery, and the Populace are encouraged to believe, that the Council are *mere Tools* and *Engines* to the Crown, from whom they pretend to derive *Powers*, which are wantonly stiled *Usurpations*; what security can such a Branch of the Legislature have, when they are neither formidable by Numbers, nor important in the course of Jurisdiction?

The Assembly have now declared to the People, that there is no Upper House, and that a Commitment for Contempt by the Council in that character is Illegal, Unconstitutional, and Oppressive; and so I must allow it to be, if they are not a Second Branch of the Colony Legislature. This is a melancholy Judgment, big with danger, and subversive of all Civil Order: The bands of our Society are now loosened, the plan of his Majesty's Government totally disordered, and the Commons are the *vortex* which swallows all the power.

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We are surely going back to the unhappy æra of 1648. History informs us of the *Evils* of those days; and we may guess what ill effects will flow, if such doctrines are revived; especially if there is no Middle State to restrain the exorbitancies of Democratical Oppressions. Methinks I see the beautiful copy of our English Constitution much altered and defaced; yea, the *vitals* of our Civil State have received a mortal wound: but my hands are not embrued in this cruel murder; and though I behold strong men, like *Sampson*\*, taking hold of the middle pillars, over-setting by one bold effort the fabric they support, I will sooner be buried in its ruins, than be a sorrowful spectator of a Factious Triumph.

If the Council are no Upper House, though they do the business of one, and have no authority to Commit in any case; if they are destitute of every Parliamentary Right and Protection, I see nothing to oppose the Sons of Violence and Disorder from intruding into the Council-chamber, overawing their proceedings, obstructing the Members in their Legislative deliberations, and committing every act of disrespect and insolence; and under all these pungent aggravations, his Majesty's Honourable Council must either submit to the affront, or exert a power which two Justices will under colour of Law evade, and for which the Assembly will bestow their highest commendations. What Man of Spirit and Reputation will condescend to this inhuman treatment? The Subject who owes a duty to the King, likewise owes a duty to himself; and if he neglects to support his own honour and dignity, it is much to be feared he will add little to his station.

\* Judges xvi. ver. 29.



Men who seriously contemplate this important subject, and who have no private interest to serve, or favourite passion to indulge, who search for Truth as a *Pearl of great price*, and wish the prosperity of every Member of the Empire, must silently bemoan the unhappy and deranged state of Public Affairs in one of the most flourishing Colonies of North America.

I have briefly sketched out the wide difference between the House of Lords and the Council of our Province, and I have also hinted that our dependant situation makes it neither suitable nor proper that our Privileges should approach a literal comparison with those of the Parent-State; but surely so much power and weight must vest in this Middle Branch, as will answer the ends and purposes of their original institution. Every one admits, that their consent is absolutely necessary to the enacting Laws and Statutes; and it is *this consent* which gives them a Legislative Capacity, and entitles them to such rights and privileges of Parliament as are immediately essential to their existence as one distinct Member of the State. The power of Commitment for Breach of Privilege and Contempt, is that kind of authority which is necessary to their existence as a Body; for without it, every thing they do is a mockery and farce, and they are a mere *Tub* to the Whale, to sport and play with. Judges, Justices, and Courts of Justice, enjoy, and daily exercise this power; and if deprived of it, they could not subsist a moment, or answer the end of their appointments. And if Magistrates, when persons are brought before them by Habeas Corpus, take upon them to discharge Prisoners committed for Contempts, because no Act of Parliament is produced to warrant the Commitments, I am inclined to believe, that the Court which Committed would devise some plan  
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of punishment for such an insolent offence. Perhaps some ignorantly suppose, that this power of Commitment, the Privileges of Parliament, and the Right which Courts sometimes practise of giving Protections in certain cases, all spring as concessions from the Crown : but this is not the fact ; for the Prerogative has no such powers to give. Perhaps others believe, that they are derived from some old Statute, deep buried in the Rolls of Parliament. This neither is the case. No ; these powers arise by the necessary operation of Law, as incident to the respective Courts and Offices which exercise the same ; they are entwined, as it were, in the Constitution itself, and are as much a part of the Law of the Land, as Magna Charta, or any other venerable Statute. The King cannot make Law, or create Privilege ; but it is the Constitution itself which conveys peculiar and acknowledged Rights, and Privileges, and Protections, to the Parliament, to certain Officers of Trust, and to the Courts and Ministers of Justice. Their origin, perhaps, cannot be traced to the spring-head, any more than many principles of Law ; but immemorial usage, general consent, and urgent necessity, have given them as deep and good a root, as written Laws or Statutes possibly could do.

The Ninth Article of Rights insisted upon at the time of the Revolution, is, “ That the Freedom of Speech, and Debates or Proceedings in Parliament, ought not to be impeached or questioned in any Court out of Parliament.” Now, comparing our Legislature, for the purposes of our own interior Polity, to the great Original from which the same is evidently copied, it seems unjust to the last degree, that the Proceedings of a Provincial Council should be impeached and questioned, nay over-ruled by Inferior Magistrates ;  
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and that persons should be absolutely set at liberty, Committed by them acting legislatively; and that the Assembly shall also be permitted to interfere, censure the Middle State of the Colony, and give marks of applause to their own Members who presumed to decide so nice a question. And this is the more extraordinary, when it is considered, that the Act of Settlement at the Revolution, gives no new and unknown Rights, but merely declares such as the People then claimed to be their indubitable Rights and Liberties; and likewise when we farther reflect, that our Patriots are always happy to point at periods which have been so conducive to the establishment of Public Freedom.

No man can give a good reason, why the Assembly should have such Rights, and deny them to the Council; for they can only claim them as bearing a relation to that Body which enjoy them in England, and the Council can only do the same; and it cannot admit of doubt, that the power is as necessary and essential to the one Branch, as it is to the other. Perhaps it may be said, that the Council are few in number, and that the power may be abused. To this I can only answer, That Popular Assemblies are most likely to be hurried into acts of precipitation, as well as violence; and that the objection to Power, merely because the same may be abused, is weak to a degree: and when I assure my Reader, that the Power of Committing has never been exercised by the Council more than twice from the first Settlement of the Colony, no great stress can be laid upon the danger of intrusting the Upper House with such a Power. But to shew my candour, I must frankly own, that this argument is as strong to prove the People very *good*, as to prove the Council either temperate or wise.

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The whole scope of the argument against the Council's power as an Upper House is, That they are not as Independant as the People wish, and of course do not possess that degree of Freedom which befits the Legislative Body of a Free Country; that is, the Council are not the Hereditary Counsellors of the King, nor do they possess many of the high privileges which pertain to that illustrious body. They are no Court of Judicature, nor do they try their own Members on life and death; they derive nothing from prescription or time immemorial; and their tenure is at the pleasure of the King, or at the will of a Governor. And because these things are so, shall this Branch have no privilege whatever? Because they are not wholly Independant, are they on that score to be Dependant altogether? Is there no intermediate state between the most extensive and the most limited authority? And because the Council are not a House of Lords, are they destitute of all Legislative Rights? This kind of reasoning is presumptuous to a great degree; because, granting we possessed those ample powers, they must be useless burthens. We have neither Finances to maintain the dignity, or Objects to deserve the splendor; our State is narrow, and our wants are few; we have no prospect beyond the limits of the Colony, and therefore the Nobility would be *idle affectation, foolish pageantry and insensible parade*. But these circumstances by no means exclude such incidental and concomitant powers as are necessary to support a certain degree of dignity and weight suited to our case, and requisite for the maintainance of due order and distinction. When time shall ripen, and make us Independant, we may aspire to *Dukedoms*, and pant for *Lordships*; but at present, we may content ourselves

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with the power we *have*, which is nearly equal to the power we really *want*.

I take it for granted, that I have said sufficient to convince my Readers, that the Council are an Upper House, and have a right to Commit for a Breach of Privilege and Contempt; I shall therefore only cite a few Cases to convince them, that a Man cannot be legally discharged by any Power whatever from a Warrant of Commitment by a Legislative Body, during the sitting of both Houses.

In the Case of one Sheridan, who, in 1680, was in custody by Order of the House of Commons, and who applied for a Habeas Corpus, which was denied, the matter was agitated in the House; and one of the soundest Lawyers in those days, Sir *William Jones*, in express terms declared, that the Habeas Corpus Act doth not extend to Commitment by either House of Parliament; that it relates merely to Cases bailable; that Commitments by the House are in the nature of Judgments; and that no Commitment on a Judgment is a bailable Case. This happened about two years after the Habeas Corpus Act passed, which makes it a strong argument in point.

The celebrated Case of the Aylesbury Men has settled this matter beyond a doubt; and the only Case which has occurred since that Determination, is that of the Honourable Alexander Murray, about twenty-two years ago; who being Committed by Order of the House of Commons, and a Habeas Corpus being issued, the cause returned by the Goaler was only an Order of the House of Commons, without *any crime alledged*; and the Judges declared they could not "Question the Authority of that House, or Demand the cause of their Commitment, or Judge the same;" and they remanded the Prisoner; this great point

is therefore clearly settled, and *now* is become the Established Law of the Land.

Some people object, that the Council are a mixed Body, and that it is improper to vest the same persons acting as Advisers to the Governor with the Legislative Powers of an Upper House; but I see no great weight in this Objection; as there is, in fact, no connection between the respective Duties, they being altogether distinct, and seldom bearing the least relation to each other: however, granting that a Case may arise in the Legislature which had been in some degree under the consideration of the Council of State, it cannot be supposed that the Members of the Council will counteract *Legislatively*, what they had before done or advised as a Board of Privy Council, because these different situations create no separate interests, neither do they subject the Members to any *invincible necessity* of acting in a manner contradictory or repugnant to themselves.

This Body, by their very constitution, are intended to maintain a kind of Balance between the Crown and the People; for “the two Houses” “naturally drawing in two directions of opposite” “interests, and the Prerogative in another, still” “different from them both, they mutually keep” “each other from exceeding their proper limits.” The Council are a sort of *Barrier* to withstand the Encroachments of the Lower House; and by the experience of a Century at least, the Institution has been found to answer extremely well the purposes of our Subordinate Jurisdiction. The great mistake in which men find themselves involved upon the subject, is wholly owing to an *Original Error*. We are apt to argue from the situation of a great and mighty Kingdom, without perceiv-

\* 1. Blackst. 155.



ing, that *political fitness* and *expediency*, such as are suited to the Rank, the Wants, or Necessities of an Empire, cannot be applied to our *limited condition*. The *fitness* must undergo various changes and modifications; and though we may retain certain features sufficient to preserve a kind of resemblance, and mark our *Filiation*, it is impossible we can literally copy the whole piece.

The Establishment of Provincial Councils in their present form, has till lately given satisfaction both to the Crown and People, and the opposition which has been stirred for several years past, is owing to some Alterations which Time has produced; the most material of which is the encrease of the People's Representatives in General Assembly, whereby the due equipoise is in a great measure lost, and the weight of power centers with the People. *Like causes* will in all Countries produce *like effects*; and whenever that nice æquilibrium which the different Branches of the Constitution are intended to preserve, is lost, by an accession of too much power to either Branch, the one will of course swallow up the other. Thus it happened, the last Century; when the Commons had resolved upon the Downfall of Monarchy, they likewise voted the *House of Lords* to be useless and dangerous.

The Colony suffers in no respect by the twofold character of a Council; but if a Privy Council were to be formed promiscuously from the Members of both Houses, this would weaken the weight of the Crown, and add greatly to the scale of the People, which stands in need of no addition. But, in my apprehension, it seems absolutely necessary that the Numbers of the Council should be encreased; and for this plain and obvious reason, Because a body of Twenty-four Counsellors, for instance, appointed by the King from the First Rank

Rank of the People, most distinguished for their Wealth, Merit, and Ability, would be a means of diffusing a considerable Influence through every Order of Persons in the Community, which must extend very far and wide, by means of their particular connections; whereas a Council of Twelve, several of whom are always absent, can have little weight, nor can their voices be heard amidst the clamour of *prevailing* Numbers.

I think this Body, acting Legislatively, ought to be made independent, by holding that station during the term of their Natural Lives, and determinable only on that event, or on their intire departure from the Province. But the same Person might nevertheless, for proper cause, be displaced from his Seat in Council; which regulation would, in a great measure, operate as a *Check* to an arbitrary Governor, who would be cautious how he raised a powerful Enemy in the Upper House by a rash Removal; at the same time that the power of Removal would keep the Member within proper bounds. The Life-Tenure of his Legislative Capacity would likewise sufficiently secure that *Independency* which is so necessary to this station, and so agreeable to the Constitution of the Parent-State. I know some folks will raise both scruples and fears; but for my own part, I think without much reason: for if we attend to the workings of human nature, we shall find, that a certain degree of Attachment commonly arises to the Fountain from whence an Independent Honor flows. Opposition seldom settles upon the persons who are raised to Dignity by favor of the Crown, it having so much the appearance of Ingratitude, one of the most detested vices; and it ever acts a *faint* and *languid* part, till a Descent or two are past, and the Author of the Elevation is extinct. From this reasoning it seems tolerably clear to me, that the

the Legislator being for life, and deriving his consequence from the Crown, will rather incline to *that scale*; and it is not probable that his opposition could in any instance be *rancorous* or *factionous*, inasmuch as, though his Life-Estate is secure, he would not wish unnecessarily to excite the resentment of the Crown, or exclude his Descendants or Connections, perhaps, from succeeding afterwards to such a Post of Honour and Distinction in their Native Country: in short, this idea seems to admit such a *qualified Dependency*, as will attach the Person to the side of the Crown in that proportion which the Constitution itself allows, and yet so much *real Independency*, as will make him superior to acts of Meanness, Servility, and Oppression. Whether these sentiments are well founded, or not, I submit to the impartial judgment of my Reader; what I principally mean to infer is, that the Happiness of these Colonies much depends upon a due *blending* or *mixture* of Power and Dependence, and in preserving a proper Subordination of Rank and Civil Discipline.

Some few distinctions it might be proper to annex to this situation, as an inducement to Men of Family and Fortune to accept the trust; for, in its present *impotent* state, it is a real burden; and as being overborne by the force of Numbers in the Lower House, is rendered obnoxious to the People, and oppressive to the Party.

These hints I venture to throw out as a kind of temporary or provisional expedients, such as may suit our present state and condition, and in conformity, in some degree, to the original plan sketched out on the First Settlement of our American Colonies. What may be fit and proper for each Province upon a change of the System altogether, and upon a more enlarged and comprehensive plan, I do not presume at present to suggest;



gest; the subjects of this Pamphlet being principally confined to one particular Colony; and therefore an entire new scheme, or plan, upon untried ideas, is rather foreign to my present purpose. When the Colonies have made further advances in Population, Trade, and Science, some other mode of Government may, at a future day, become necessary for the safety and security of the American Dependencies, and for the permanent establishment of British Rule and Sovereignty over these distant and remote Members of the Empire: at present, the old Original *Draught* will probably answer every purpose, with the aid of a few occasional improvements, such as time, and a change of circumstances, naturally suggest, without doing the least degree of violence to the present System. In every human work, we find so much work of the *Moment* prevail when it was first fabricated, that a few years often convince the Original Projectors, how short-sighted and imperfect their ideas were, how unequal to answer any material vicissitudes, or to sustain the weight which it was intended to bear. Daily experience must convince every thoughtful man, that the *political*, as well as the *corporeal* System stands in constant need of correction; that the motions of the one are frequently affected by foreign and accidental causes, as well as the other; that a due and orderly circulation may be wanting in both; that gross humours oftentimes arise, and threaten danger, unless speedily removed and wisely managed; that as excrescences do many times deform and afflict the natural body, so, in like manner, uncommon tumours invade the Body-Politic, and render it diseased and infirm; therefore Art must supply the want of foresight, and such physical skill must be exercised, to remove maladies, and restore to soundness, as the prevailing symptoms may require.

quire. Idle Quackery must be totally avoided; for no Cure less than *radical*, can be of material moment, whether the machine be *human or political*.

I cannot close this subject without expressing my sincere concern, that such unhappy disputes divide mens minds, and distract the Public Councils of this Country; and I have presumed to offer these considerations to the world, that the subject may be fully understood, and that the Colony as well as others may judge of it with the greater ease and certainty, by seeing every fact fairly stated and candidly discussed. But I must again repeat, that Twelve Members of the Council bear no kind of proportion to the numbers of the *Lower House*, which consist of Forty-eight Members: and what still adds to the defect is, that as several of the Council are frequently and necessarily absent on their own private concerns, and it often happens, that others are either absent from the Province, or, through sickness, are unable to attend, the Council seldom consist of more than *five* persons; and commonly only *three* assemble to dispatch the most weighty concerns. This circumstance lessens the real and constitutional dignity which this Body are intended to maintain, and the People cannot be taught to reverence or respect an institution, the Business whereof is transacted, like a Court of Quarter Sessions, by three Justices of Peace! Hence it is, that the *Middle Branch* is in a manner overwhelmed by the force of numbers in the Lower House, and that they fall into Derision and Contempt for the want of *Numbers* in their own. I therefore most ardently wish to see this evil remedied, by such an addition to the number of his Majesty's Council, as that Twelve Members at least may always be assembled on the Business of the State; then, and not till then, will this middle Branch be able to maintain a proper  
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Balance to support their own Constitutional importance, and to withstand the overbearing attempts, and the haughty encroachments of the Lower House.

I sincerely wish the lasting happiness of the Colony of South Carolina ; and I am firmly persuaded, that nothing is so likely to promote it, as a timely and speedy interposition on the part of the Crown, and a decisive settlement of these uneasy contentions upon the sound principles of the English Constitution.

Although it is not the immediate design of the present Publication to consider American Affairs at large, it may possibly be expected, that something should be said concerning the general relation which the Colonists bear to the Mother-Country ; and that having traced the Constitution of the Colonies, and observed upon its resemblance to the British Model, it may not be altogether foreign to offer a few thoughts on their Common Rights, as the remote Children of Great Great Britain.

So much has been said on the right of *Taxation*, and likewise on the idea of *Virtual Representation*, that I forbear to offer one sentiment about them ; and the rather, as I am inwardly persuaded, that the grand security of the Colonists against unreasonable Burthens, Taxes, or Impositions of any kind by the Mother-Country, (granting the Right to do so to be unquestionably clear) consists in this : That the Interests of both Countries are so blended together, and so entirely intermixed, that it is not possible for the Parent-State to oppress her Colonies, without sensibly feeling at the same time, and also partaking of a proportionable share of the evils arising from any false measure whatsoever. Colonization cannot thrive under hardships and discouragements ; and

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when the Colonies begin to languish, Britain may begin to tremble. America therefore has, seriously speaking, nothing to fear; for Interest alone, without the principle of love springing from such a near and dear alliance, will always bring matters right, and prevail against bad policy and evil machinations.

The following ideas form a part of my American Creed: The happiness and prosperity of Great Britain and her Colonies depend *solely*, under God, on a firm and *indissoluble Union*; and therefore every man who wishes well to his Country, ought to lay aside all narrow and contracted notions, and should exert his utmost abilities to remove idle Prejudices, ill-grounded Jealousies, Vulgar Errors, and misconceived ideas; and by resorting to the Principles of our Constitution to rectify Political Mistakes, he will thereby promote the Public Good, and enforce a *uniting, conciliating, and strengthening System*.

The King's regal power is as extensive as his Territory; and as there must be in every State one *supreme Legislative Jurisdiction*, so the same, in like manner, has a right to an occasional exercise thereof, over the most distant and remote Branches of the Empire. And this one over-ruling Power is implied in the nature of things; for there cannot exist, at one and the same time, in the same Empire Two supreme Jurisdictions; because *Equals* can on no score controul *Equals*, and Two supreme Directions imply two distinct and separate States: I therefore hold, that in our Government this One *Supreme Legislature* is the *British Parliament*, which clearly possesses *summum imperium*; whilst our Colonies, at the same time, possess certain Subordinate Powers of Legislation, as essential to *their Political Existence*.

The Colonies are not Conquests, but English Plantations ; they are the Genuine and Legitimate Offspring of Great Britain, and are, beyond all doubt, well entitled to *jus publicum*, and *jus privatum*. That they are part and parcel of the King's Dominion, and were intended to be united thereto as intimately as possible, appears from the spirit and sense of all the Charters, from the express words of the several Acts of Navigation, and from all the Statutes wherein any mention is made of America, from the first foundation and settlement of the Colonies to the present day ; it is therefore idle to question this superintending and over-ruling power of the British Parliament, or its right to extend to these remote Countries, as parcels of one great State, to which they are united. " Truth, as Dr. Cudworth says, is the most unbending and uncompliant, the most necessary, firm, immutable, and adamant thing in the world."

That the Union between the two Countries may be the more compleat, I earnestly wish the Colonists to see *their happiness* in that *very Dependence* on the Mother-Country, which is their best security, both against Foreign and Domestic Foes ; at the same time I as sincerely wish, that the British Rule over these distant and valuable Territories, may always be mild, temperate, and just, and that so much of the English Constitution as can consistently be interwoven into these Subordinate Jurisdictions, may be from time to time added, to complete the Image of that model, which it is intended to represent.

There is not a maxim of Religion, Morals, or Politics, more evident to me than this : That America is a *Hen* that lays her *Golden Eggs* for Britain ; that she must be cherished and supported as part of the great Family of Britain ; then will

her Trade encrease; and in return she must promote and augment her Commercial connection with the Mother-Country, and “† *cling to her like as the vine curls her tendrils, which implies* *“subjection.”*”

It is certainly proper that the Colonists, in consideration of protection, should, on their parts, maintain a becoming reverence and esteem for the Supreme Power of that Empire, of which they are Members. Their Allegiance, Honour, Gratitude, Faith, and every thing else are pledged in conscience to the Parent-State; it is their Duty to give strength to the Commonwealth, and to use their Liberty, not as a *Cloak* for Licentiousness, but for the maintainance of Civil Order. They should always remember that Liberty is best supported by a settled plan of Government, and that contumelious treatment of the Mother-Country is at all times a bad lesson to the Members of their own Subordinate State: In short, they should lay aside Jealousies, and nourish a spirit of Trust and Confidence; always keeping in remembrance what a celebrated Writer hath long since said, “§ This is not the Liberty which we can hope, “that no grievance ever should arise in the Commonwealth: That, let no man in this world “expect; but when Complaints are freely heard, “deeply considered, and speedily reformed, then “is the utmost bound of Civil Liberty attained, “that wise men look for.”

† Milton.

§ Ibid.

POSTSCRIPT.



## P O S T S C R I P T.

SINCE the foregoing Sheets were finally completed, Mr. Thomas Powel the Printer, (whose Name has been already mentioned, page 33, and who had been so fortunately relieved from his Confinement by Two Magistrates under the Habeas Corpus Act, as before related) attempted by his Attorney, on Tuesday the 18th of September last, (being the Return-day for the Process of the Court of Common Pleas in the Colony of South Carolina) to file a Bill against Sir Egerton Leigh, President of the Council, (he being likewise one of the Lawyers of that Court) to answer to the Complaint of the said T. Powel, for Assault and false Imprisonment of his Person, to his Damage 1900 l. currency; and that Gentleman being present when a Motion was made for Leave to file the same, he took occasion to inform the Court, that the Assault and Imprisonment stated in the Bill, relate to a Warrant of Commitment signed by him at the last sitting of the Legislature of this Colony, and by the *express Order of the Upper House of Assembly*, for a Breach of Privilege and Contempt committed by the said T. Powel; and therefore he submitted it to the Court, whether it was proper to admit such a Bill to be filed; and he likewise reminded their Honours the Judges of the 9th Article contained in the *Act of Settlement*, 1 William and Mary, Sess. 2. c. 2. of Force in that Colony, "That the Freedom of Speech, and Debates or Proceedings in Parliament, ought not to be impeached or questioned in any Court or place out of Parliament."

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The Chief Justice declared the Case to be a point of the utmost moment; and as the Bench was thin (only one Assistant Judge being present), the motion for filing the Bill was postponed, and the Attorney accordingly withdrew it for the present.

On the 12th of October (being the first day of Term) the Bill was filed; and on a four-day Rule being served on the Defendant, he made an Affidavit, stating, That the cause of action related solely to matters transacted in the *Upper House of Assembly*, and therefore not cognizable by the Court. On this Affidavit, a Rule was made on the Plaintiff, to shew cause why all Proceedings in this Action should not be stayed; which being Argued on the 16th of October before all the Judges, they were pleased to order the Rule to be made Absolute.

THE Chief Justice entered very copiously into the subject, passed some applicable strictures, and in exprels and direct terms declared the Council *to be an Upper House of Assembly*; in which his Brethren unanimously concurred. Thus was defeated, one of the boldest attempts against the Constitution of this Country, that Faction and Democratical Insolence could possibly devise; and by the virtue and firmness of the superior Judges, the Wound which the King's Government had suffered has been in part healed, and the Authority of the Middle Branch of the Provincial Legislature is now *legally* and *judicially* established.

Few cases ever happened before of so uncommon a nature, in any part of his Majesty's Dominions; and I think the World itself, and every Civilized State in it, may be challenged to produce an instance, where any Public Departments have been more cruelly insulted.—Let every private man judge for himself. His Majesty's Honour-  
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able Council, being the Upper House of Legislature of South Carolina, are first attacked by a publication of their Proceedings without leave of the House; and when the Printer was interrogated, he acknowledged the fact, and refused to give any satisfaction which the Honour even of Private Gentlemen could allow them to accept; and such as he offered, manifested the most daring Disrespect. The House was obliged to Commit Him for a Breach of *Privilege* and *Contempt*; the effect of which Commitment was afterwards *eluded* by Two Justices of the Peace, and Members of the Lower House, who judicially pronounced the Council *to be no Upper House of Assembly*, and thereupon discharged him.—The Council applied to the Assembly for redress; and in lieu thereof, violent Resolutions were made, declaring the Commitment *unprecedented, unconstitutional, and oppressive*, and a dangerous violation of the Liberty of the Subject. The Thanks of the House were next given to the Two Justices for their *able, upright, and impartial* decision upon the Return of the Habeas Corpus; their reasons given for the discharge of the said T. Powel were declared to be extremely satisfactory to that House; and this approved Judgment was printed at their desire.

The Assembly, to add further to the Insult, addressed the Governor to Suspend those Members who voted the Commitment, and his Majesty is likewise applied to for their Removal.

The Printer being at large, persisted in publishing the Proceedings of the Upper House; and to aggravate the case, *notes* were added, giving the direct *Lie* to the Council, and stating an unfair apology for the Printer's Conduct when called before them: and to sum up all, the same paper acquaints the Public, that “thus was defeated the most violent attempt that ever had been made in this Province upon the Liberty  
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“ of the Subject——probably intended to controul the Liberty of the Press.” In consequence of these inflamed transactions, the Council found themselves divested of all power, reduced to the most abject state of contempt, their Legislative Authority virtually abolished, and the very persons to whom the King himself had entrusted so large a share in the Administration of Public Affairs, shamefully made the sport and derision of every Order of Men in the Community.

The Upper House, clearly perceiving that fresh Commitments would only produce new Insults, as the same or other Justices might be found to discharge the Prisoners upon the like pretences, patiently submitted to this cruel Persecution; and nothing but the most Loyal Affection for the King, a dutiful regard to the Subjects of the Province, and the most sincere attention to his Majesty's Service, could possibly have prevailed upon the Council to have held their Seats a moment longer; but these disinterested motives, and a full confidence that his Majesty will in due time redress these Grievances, powerfully operated upon their minds, and influenced their conduct.

It is remarkable, that notwithstanding the Two Justices (both Members of Assembly) pronounced so pleasing a Decision, which had the honor to be approved by the Commons House, was celebrated, and in fact warmly adopted by them, and admired as the *Apple of their Eye*; out of Six eminent Gentlemen of the Bar, all Members of the House, not one appeared to promote or to aid *poor Powel's Suit*. The Assembly gave their Countenance by *Words, Thanks, and Resolutions*; but here they stopped, and the Lawyers seemingly avoided a Piece of Business, which perhaps they appre-

apprehended might be attended with some Risque and Danger; for many will help the Cry, who dare not join the *Chace*. It is likewise very strange, that other eminent Gentlemen, not Members of the House, should appear so shy in a case of this pretended moment and importance; and that the conduct of a suit upon the most favourite Idea of the People's Representatives, should be entrusted to the care of a single person; and the rather, as in Popular Cases the Bar have been known to rise like an armed Man, forming a firm *Phalanx* to resist the force of one Crown-Officer in the Law-Department.

The Two Justices have boldly determined that the Council are *no Upper House*; and the superior Judges have judicially resolved *that they are*; it must therefore follow of course, that the *former* have done wrong in discharging a Prisoner committed by the Upper House; and the Assembly can scarce be right in approving an Act in every sense *illegal*; for I have a clear pretence and a just right to call That *illegal*, which is not consonant to the determinations of the King's superior Judges.—The Magistrates seem to me to be in a very awkward situation; for the empty applause given them by one Branch of the Legislature will not so bolster up the *matter*, as either to indemnify them, or to justify their conduct.

Sir William Williams \*, being prosecuted for printing and publishing a seditious Libel reflecting upon the Duke of York, the King's Brother, called *Dangerfield's Narrative*, he pleaded to the jurisdiction of the King's Bench, That he being *Speaker of the House of Commons*, caused the same to be printed by order of the House; to which the Attorney General Demurred; and judgment was

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entered

\* 2 Show. 471. Tremaine 48.

entered for the King, and Sir William was fined 10,000 l. sterling; and on payment of 8000 l. satisfaction was entered on record: Every order, therefore, of a Legislative Body will not always justify indiscriminately the conduct of those who pay obedience to it; and that Body whose order was insufficient to *justify* when obedience was paid to it, would prove a *broken reed* to rest upon, when approbation only followed an illegal Act, unsupported by any order whatsoever.

I now and then read a little law for my amusement and instruction; and I have a few books which tell me, that a Man may be guilty of a very high offence, by making use of improper pretences to reform Religion, the Laws, or other Grievances, real or *affected*; and that one may commit high Contempts and Misprisions against the King's Person and Government, by doing any thing that has an *immediate* and *direct tendency* to *weaken his Government*, or to *raise jealousies between Him and his People*.

Whether the conduct of these Gentlemen exposes them to censure of any kind, I must submit to those Learned in the Laws; for as I know of no Statute which draws a line, or points out precisely the extent of their *Judicial Power*, perhaps they may be allowed to determine (provided a Case leading to it is regularly before them) that an old established plan of Government is worn out, decayed, and prejudicial to the State; that they can give some sound and useful hints for the reparation of certain State Edifices, and substitute something new in the room of old departments. Perhaps it may be perfectly agreeable to their magisterial constitution, to pronounce any branch of Government *useless, unnecessary, or burthensome*, which their own understanding and experience tell them to be so. — The Justices are on Ground



## POSTSCRIPT.

83

*too slippery* for me to trace their footsteps farther ;  
I must therefore retire, and indulge myself with  
a few serious reflections on the Glorious System  
of our English Constitution ; and I beg to re-  
commend a piece of advice well expressed by a  
learned author \*, “ Let us keep the balance as  
“ even as we can, by forming every estate in the  
“ Constitution a controul upon the rest ; but it  
“ is extravagant to think of leaving the *least*  
“ *strength or temptation to individuals to controul*  
“ *Government itself.*”

\* Law of Forfeitures, p. 126.

## F I N I S.

## E R R A T U M.

In p. 33, l. 16, of some Copies, *for* disapprove, *read* disprove

POSTSCRIPT

no. 10. for me to write their notes. I must therefore write a few serious reflections on the German System of our English Constitution; and I beg to recommend a piece of advice well entitled by a learned author, "Let us keep the balance as even as we can by counting every stone in the Constitution a weight upon the left; but it is dangerous to think of leaving the right weight or measure to the scales to be filled."



2. 1. 1. 1. 1.

E R A T U M

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